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Situation of human rights in Belarus*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in Belarus, Miklós Haraszti, submitted in accordance with Human Rights Council resolution 32/26.

* The present report was submitted after the deadline to take into account information received by the Special Rapporteur during his trip to Minsk in July 2017.



Report of the Special Rapporteur on the situation of human rights in Belarus

Summary

The present report is submitted by the Special Rapporteur on the situation of human rights in Belarus in accordance with Human Rights Council resolution 32/26.

The report examines the relationship between the unique features of governance of Belarus and its situation of human rights. It concludes that one of the main structural reasons for both the entrenched systemic abuse of human rights and the cyclical waves of mass repression in the country is that all powers are assumed by the executive branch, chiefly the President and the presidential administration. Although the Constitution provides for the separation of powers and respect for human rights, the reality is a monolithic power structure with laws and governance aimed at maintaining the concentration of powers and an absence of effective human rights guarantees. As a result, improvements are made only temporarily and at the margins, while the oppressive might of governance through centralization erupts from time to time into massive crackdowns on those attempting to exercise their rights.

The recent cases of human rights abuses described in the report testify to the effects of the uptake by the President and the presidential administration of the powers of both the legislative branch and the judiciary. The severe crackdown on the massive peaceful demonstrations in February and March 2017, including the arrest and then the release of a new set of political prisoners, mirrored the violence of 2010.

The Special Rapporteur makes recommendations to improve the human rights situation in Belarus in line with the country's international obligations.

I. Introduction

A. Background

1. The mandate of the Special Rapporteur on the situation of human rights in Belarus was established by the Human Rights Council in its resolution 20/13 in response to the wave of mass arrests and the crackdown by law enforcement officials in Belarus in the aftermath of the presidential elections of 2010. The Special Rapporteur assumed his functions on 1 November 2012. On 23 June 2017, in its resolution 35/27, the Council extended the mandate for one year.
2. In his most recent report to the Human Rights Council (A/HRC/35/40), the Special Rapporteur provided an account of the worsening situation of human rights in Belarus, in particular following the large-scale organized repression in March 2017 of protesters who were peacefully demonstrating against the application of a presidential decree that posed a direct threat to the social and economic rights of hundreds of thousands of Belarusians.
3. The severe interventions by State agents in March alarmed the international community¹ and reminded partners of Belarus of the cyclical aspect of the repression in the country. After taking some steps towards a relaxation of persecution, which might have been labelled as progress, the Government returned to the practice of silencing dissenting voices and targeting human rights activists and journalists, two categories of individuals that the Government has been harassing over the past 23 years.
4. The ratification of the Convention on the Rights of Persons with Disabilities is a welcome move towards greater respect for the rights of a portion of Belarusian society. The Special Rapporteur hopes that the provisions of the Convention will be translated quickly into domestic legislation, followed by timely compliance with reporting obligations.
5. The Special Rapporteur also welcomes the registration of the "Tell the Truth" movement in May 2017, after seven years of rejection.
6. In his most recent report to the Human Rights Council, the Special Rapporteur analysed the inter-agency plan for the implementation of selected recommendations of the Working Group on the Universal Periodic Review and of treaty bodies. The plan is being promoted by the President of Belarus, Alyaksandr Lukashenko,² and the Ministry of Foreign Affairs as a human rights national action plan and, therefore, an important step in demonstrating to international partners the Government's commitment to human rights. However, the actual document is hardly more than a checklist of 100 gratuitous promises, many of which are not action-oriented and largely ignore entrenched human rights concerns.

¹ See www.ohchr.org/en/newsevents/pages/displaynews.aspx?newsid=21375&langid=e; https://eeas.europa.eu/headquarters/headquarters-homepage/22974/statement-spokesperson-recent-protests-and-arrests-belarus_en; www.osce.org/office-for-democratic-institutions-and-human-rights/305781; https://eeas.europa.eu/headquarters/headquarters-homepage/23471/events-run-and-during-todays-freedom-day-belarus_en; www.osce.org/office-for-democratic-institutions-and-human-rights/307476; <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=6565&lang=2&cat=137>; www.gov.uk/government/news/foreign-office-statement-on-demonstrations-in-belarus; www.auswaertiges-amt.de/EN/Infoservice/Presse/Meldungen/2017/170328_BM_BLR.html?nn=479796; https://eeas.europa.eu/delegations/belarus/24141/eu-belarus-coordination-group-met-third-time_en.

² See <http://eng.belta.by/president/view/address-of-belarus-president-alexander-lukashenko-to-osce-pa-plenary-session-in-minsk-103056-2017/>.

7. The release of political prisoners in late 2015, although not accompanied by the reinstatement of their rights, was a positive gesture. However, the practice of arresting and jailing opponents has not stopped. There are new political prisoners in Belarus, and criminal cases that were initiated during the crackdown of March 2017 are still ongoing and could result in jail sentences.

8. The Special Rapporteur is pleased to report that the Government of Belarus did not oppose his participation in the annual session of the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE), which took place from 5 to 7 July 2017 in Minsk. The Special Rapporteur thanks the President of the Assembly, Christine Muttonen, and the Secretary-General of the Assembly, Roberto Montella, for the invitation to the session, and the Vice-President of the Assembly, Kent Härstedt, for organizing and leading a seminar on the situation of human rights in Belarus, which provided the mandate holder the opportunity to go to the country and speak there as Special Rapporteur for the first time since his appointment.

9. While welcoming the Government's tolerant approach, the Special Rapporteur does not consider the fact that the Government permitted him to participate in that session to be a form of cooperation, given that the Ministry of Foreign Affairs issued a statement during his stay stressing that such permission was granted solely because of the OSCE Parliamentary Assembly and did not represent openness on the part of the authorities of Belarus towards the mandate. In fact, communications sent by the Special Rapporteur to the authorities of Belarus, including requests to visit the country, remain unanswered.

10. In his previous report to the General Assembly (A/71/394), the Special Rapporteur analysed the impact of the electoral system and the absence of an effective Parliament on the human rights of citizens in Belarus in the context of the parliamentary elections of September 2016, during which two members of the opposition were allowed to become members of Parliament. The Special Rapporteur welcomed the absence of aggression by law enforcement bodies.

11. Alas, the events of March 2017 demonstrated that the Government has returned to its practices of mass arrests and fabricated accusations. The Special Rapporteur believes that it is important to assess the character of governance in Belarus in order to understand the reasons for its unchanging negative impact on the situation of human rights and the logic behind the cycles of repression in the country. The unique features of governance in Belarus may explain why the country has not experienced any tangible progress on its overall human rights record for more than 20 years. Despite the apparent readiness of the Government to discuss certain human rights issues, such as trafficking and the death penalty, the entrenched system of oppressive laws and strict control of the daily lives of people have made the Government undependable when it comes to committing to positive changes in the field of human rights.

12. The fact that, shortly after the demonstrations took place in February and March 2017, the President decided to suspend the collection of the "anti-parasitism" tax shows that he and his administration may listen to public desperation when it reaches a certain threshold. In the Special Rapporteur's view, however, the largely oppression-centred official reaction to the events demonstrates that governance in Belarus is designed to protect the consolidation of powers in the hands of the President and his administration rather than to provide venues for alternative ideas.

13. In the present report, therefore, by outlining the most recent cases, the Special Rapporteur analyses the impact of the authoritarian type of governance, which Belarus has been experiencing since Mr. Lukashenko was first elected President, on the situation of human rights.

B. Methodology

14. For the preparation of his reports, the Special Rapporteur collects as much information as possible from various sources, including the authorities of Belarus, civil society actors inside and outside Belarus, international and regional human rights mechanisms and the diplomatic community. During his trip to Belarus mentioned above, the Special Rapporteur was able to obtain first-hand information from activists, attend a parallel civil society forum on the reception of the OSCE report of 2011 on the Moscow Mechanism on Human Dimension³ and visit a courthouse during the trial of a human rights activist.⁴ While preparing the present report, the Special Rapporteur noted the meagre academic literature available on the subject. The report provides some historic perspectives to make the reader aware of certain aspects of the emergence of the country's present-day governance.

15. The Special Rapporteur regrets that the Government does not cooperate with the mandate holder. He again reaffirms his readiness to engage, even gradually, with the Government, beginning with the issues that both acknowledge as human rights concerns.

II. Evolution of authoritarian governance in Belarus

16. Since assuming power in 1994, the President has swept all branches of power under the presidential administration and his own personal command, not gradually but through sudden steps. The Special Rapporteur has described the interference of the executive branch with the legislative and judicial branches in Belarus in all his reports.

17. Mr. Lukashenko, who ran as an outsider against the former President, Vyacheslav Kebich, was elected President in June 1994. His deliberate attitude as a countryman, his rhetoric about the negative effects of the end of the Soviet Union, under which Belarus was one of the wealthiest republics, and his reputation as an irreproachable person, gained through his position as Chair of the parliamentary anti-corruption commission, earned him the sympathy of the electorate. At that time, the electoral system in Belarus was widely acknowledged as enabling human rights, and the elections were seen as fair and free. Similarly, the political spectrum was characterized by relative pluralism, and the media covered the campaigns of all candidates in a reasonably balanced manner.

18. The Constitution of Belarus, the drafting of which began in 1993, was adopted by the Supreme Soviet on 15 March 1994. Article 6 provides for the principle of separation of powers: "State bodies, within the limits of their authorities, shall act independently and cooperate with one another, and restrain and counterbalance one another." In fact, however, the extent of the powers of the President under the Constitution of 1994 was already large. As head of the executive, the President was entitled to nominate and dismiss ministers without the approval of Parliament, appoint judges, declare a state of emergency with the approval of Parliament and veto legal acts. The President also had the power to block the legislative process for draft laws that would affect the finances of the State, as such laws can be examined only with the consent of the President (art. 99).

19. The President sought to consolidate his power soon after his election. In May 1995, he held his first referendum, which was approved by a massive majority, granting the Russian language the status of an official language, changing some

³ See https://spring96.org/files/misc/parallel-es-forum-resolution_minsk_4-july-2017_eng.pdf.

⁴ See www.advocatenvooradvocaten.nl/12753/belarus-trial-against-oleg-volchek/.

State symbols to resemble those of the Soviet period and strengthening relationships with the Russian Federation. The deliberate anchoring of the country in values of the past, which much of the population valued for its apparent stability, had the effect of averting more future-oriented proposals. In fact, what remained of the opposition was and continues to be labelled as the resurgence of pro-Nazi movements that arose during the Second World War.

20. A second referendum took place in November 1996, weeks after a failed impeachment procedure against the President. The aim of the referendum was to reinforce the already extensive powers of the President and to extend his term by another two years. The constitutional amendments transferred the prerogatives of the legislative branch to the President. The Supreme Soviet was replaced by a bicameral parliament, the lower chamber of which had a limited number of fields of competence (art. 97.2), while all the upper chamber's 64 members were either nominated by the President or elected through a process involving pre-approval by the President. As a result of the referendum of 1996, presidential decrees apply in any field of competence and have the force of law, the President may abolish any act of the Government (art. 84.25) and the authority of Parliament to appoint members of the Constitutional Court and the Central Election Commission has been transferred to the President.

21. In 1997, the President further eviscerated the role of Parliament by creating a national bill-drafting centre, under the authority of the President and empowered to propose laws. Such power is, by the Constitution, reserved to the lower chamber of Parliament. To the Special Rapporteur's knowledge, the Constitutional Court has not dealt with the incongruity.

22. The referendum also inflated the powers of the President in relation to the judicial branch, allowing him to nominate all regular court judges and dismiss them at any point. The President nominates the Chair and deputies of the Supreme Court and the Chair and half the judges of the Constitutional Court, which was a particular target of the 1996 referendum. A number of protections provided for in the Constitution of 1994 were reduced, namely, legal sanctions against any interference in the activities of judges are now applicable only in the case of "direct or indirect pressure on the Constitutional Court or its members in connection with the execution of constitutional supervision". The protections against arbitrary arrest or prosecution were abolished. In addition, the right granted by the Constitution of 1994 to the General Prosecutor and to a minority of 70 members of Parliament to submit a request to the Constitutional Court for a ruling was removed.

23. Despite the anti-democratic content of the referendum of 1996, it was approved by a reported 70 per cent of voters, and even if the results were fraudulent, as reported by all international observers, the Special Rapporteur does not doubt that a majority of Belarusians indeed voted in favour of such a change of regime.

24. In 2004, the President further consolidated his power through the holding of a referendum on allowing him to run for another term as President and eliminating the two-term limit envisaged in the Constitution. The European Commission for Democracy Through Law warned that the referendum was driven by the personal interest of the President.⁵

25. Since 1996, no legal change, by either decree or law, has loosened the concentration of powers in the hands of the President and his administration. Combined with a reorganization of civil and military security forces,⁶ the

⁵ See [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2004\)029-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2004)029-e).

⁶ See Alexander Feduta, *Lukashenko: Politicheskaya Biografiya* (Moscow, Referendum, 2005); Pavel Sheremet and Svetlana Kalinkina, *Sluchainiy Prezident* (Moscow, 2004).

President's control over Parliament and the judicial system, including the Constitutional Court, has steered Belarus towards an authoritarian system of governance.

26. The systemic human rights violations in Belarus reported by the Special Rapporteur over the years have been committed by extremely centralized legal and administrative authorities, with the unveiled goal of the abolishment of any remaining guarantees of those rights, in the name of efficiently running the Government.

III. Absence of effective separation of powers, misuse of democratic institutions and their implications for human rights

27. The eradication of the separation of powers in the Constitution of 1994, as a result of the amendments adopted in 1996 and 2004, led to an admittedly authoritarian presidential regime. In the present section, the Special Rapporteur discusses the implications of the lack of democratic structures in Belarus on the human rights of the population.

28. The separation of powers is one of the conditions for the realization of the rule of law, as it allows for the constitutional and legal liability and accountability of the executive for abusive acts. It is also a condition for democratic change, through free and fair elections resulting in a Parliament that reflects the aspirations of the community.

29. The uptake of legislative power by the executive branch, chiefly the President, and the absence of the effective separation of powers in Belarus make the rule of law ineffective in the country. Consequently, no basic right can be guaranteed. Generations of citizens have had to live without independent institutions that can protect their rights. The right to a fair trial cannot exist in a judicial system in which members are designated and removed by the executive branch. Since the constitutional amendments of 1996, the Constitutional Court has only on rare occasions put on its agenda acts adopted by the President or Parliament, and only those on non-controversial issues. Similarly, the work of Parliament in producing legal texts has remained marginal, and focused only on issues authorized by the President.

30. Presidential Decree No. 409 of 12 September 2011, which established the Investigative Committee, further strengthened the control exercised by the executive branch over the activities of the population. The Investigative Committee was created by merging the investigative units of the Ministry of Internal Affairs, the Office of the Public Prosecutor and the State Control Committee. The President stated in 2013 that the Committee had been established "as an independent authority".⁷ However, the Committee reports directly to the President, which raises concerns about the autonomy of the body. On 22 May 2017, when he received a report of the Chair of the Investigative Committee, the President, referring to an investigation opened against a local representative of the executive, declared that the President's consent was needed to start an investigation into a person included in the President's personnel pool.⁸ The executive branch can discretionally stop or launch investigations without independent scrutiny or the possibility of appeal. The level of supervision of the President over the investigation forces of Belarus and the

⁷ See <http://sk.gov.by/en/istoria-sledstvenih-organov-en/>.

⁸ See http://president.gov.by/en/news_en/view/report-of-chairman-of-investigative-committee-ivan-noskevich-16232/.

absence of any effective counter-power are therefore destined to hamper the corrective effect expected from the judiciary.

31. The Special Rapporteur notes that the authoritarian regime in Belarus is not actively questioned by the majority of the population. To the contrary, the paralysing effect of a long absence of democratic governance in Belarus, combined with fears, heightened by the authorities through the Government-guided media, of democratization processes in the Central and Eastern European region, closes venues for discussions of the President's record on human rights and other issues. Large-majority votes are used to mock and discourage the opposition, further closing off opportunities for discontent to be expressed. The recent recognition of the "Tell the Truth" movement and the token election of two opposition members during the parliamentary elections of September 2016 may be regarded precisely as not an opening to opponents, but demonstrations by the President that he is in full control of the election processes. Conducting elections and referendums has therefore become a technical element of the policies used to seal the Government's self-legitimization.

32. Many formal aspects of a democracy can be found in Belarus: elections are held regularly, there is a judicial system and a Constitutional Court, people may travel more or less freely, Internet is accessible, and the country ratifies treaties and engages with select United Nations human rights mechanisms. The analysis over the years of the reality of all those aspects demonstrates, however, that the use made of such entities and processes is purposefully counter-democratic. The requirements of democratic accountability are manifestly ignored by the authorities. For example, the Office for Democratic Institutions and Human Rights of OSCE has to make the same recommendations after each election, advocating free and fair elections, because the Government continues not to apply the recommendations. The rejection of recommendations by United Nations mechanisms, as analysed by the Special Rapporteur in his report to the Human Rights Council in 2016 (A/HRC/32/48), functions as part of the deterrents to creating opportunities for human rights progress.

33. In the Special Rapporteur's view, the adoption of the inter-agency plan is of the same nature. While it is promoted as progress towards the realization of human rights in Belarus, a careful analysis of the plan (see A/HRC/35/40, paras. 27-31) shows that it not only does not address systemic human rights shortcomings in Belarus, but also reaffirms that only activities that enhance the Government's approach can be viewed as human rights activities.

IV. Impact on human rights of governance through the concentration of powers

34. The building up of the authoritarian regime in Belarus has been inevitably accompanied by a restrictive environment for the enjoyment of rights and freedoms. As individual liberties are perceived as a threat to the executive branch, it has adopted laws and practices that in fact deprive citizens of the rights enshrined in instruments ratified by Belarus.

35. The Special Rapporteur received extensive reports of violations of human rights perpetrated chiefly by law enforcement officials in the wake and the aftermath of the demonstrations of February and March 2017, as well as reports on issues entrenched in the system of governance of Belarus. Such reports show that human rights violations are systemic and occur regardless of massive unauthorized demonstrations.

A. Freedom of opinion and expression and freedom of the media

36. The level of control of the authorities over what citizens should know, think and express and over what the media are authorized to report on has hardly any equivalent in Europe. Before Mr. Lukashenko was elected President, Belarus enjoyed a rather free speech and media environment, similar to most countries of Central Europe after the collapse of the Soviet Union.

37. Since 1994, however, when powers were concentrated into the hands of the President and his administration, Belarus has become the only European country where no privately owned broadcast media outlets are licensed with nationwide coverage. The country has developed a special system of executive-branch warnings issued to the media on coverage issues, with a legal effect of closure in the case of repeat warnings. The so-called administrative courts, where such decisions may be appealed, do not adjudicate the complaints on merit, but merely probe whether the authorities acted within the jurisdiction provided to them by the media laws.

38. In addition, a series of laws have been adopted since 1994 that severely restrict the exercise of the freedom of opinion and expression by citizens of Belarus, thus blocking any venue for public discussion on policies imposed by the executive branch.

39. Despite repeated calls from the international community (see A/HRC/32/48), the authorities, unchallenged by any branches of government, have not improved the legal framework governing the exercise of the freedom of opinion and expression, nor eased practices of State agents in that regard.

40. Notable provisions that are regularly used by the authorities to try to silence critical voices are articles 367 (defamation of the President), 368 (insult of the President) and 369 (insult of public officials) of the Criminal Code. Articles 367 and 368 were redacted in 2001, before the presidential elections of that year, with the aim of criminalizing critical voices. They provide for up to five years of imprisonment and are used ex officio by the judicial system, without the President having to launch a complaint himself. Those disproportionate provisions intentionally create fear among those who would endeavour to express their discontent with the authorities, especially on corruption issues. The Special Rapporteur notes that, in 2003, the Constitutional Court recommended, that Parliament amend those articles to bring them more in line with the practices of other States. However, the recommendation remains ignored almost 15 years later, showing that the legislative branch, under the control of the executive, does not act to comply with the Constitution of Belarus.

41. Following their participation in the demonstrations in February and March 2017, at which they held a banner criticizing the President, two members of the "European Belarus" opposition movement faced criminal charges based on article 368 of the Criminal Code, which were subsequently dropped.⁹ Similar charges were brought against an entrepreneur and head of a trade union after 2.5 months of investigations.¹⁰ The Special Rapporteur underlines the undue length of and the massive means devoted to investigations by the Investigative Committee of charges under article 368.

42. Artistic expression continues to be interpreted by the authorities as a danger. In that context, a concert by a famous journalist and musician, Ales Dzianisau, that

⁹ See <http://spring96.org/en/news/87367>.

¹⁰ See <http://spring96.org/en/news/87524>.

had been planned to take place in Minsk was banned by the City Executive Committee.¹¹ The activist has been a regular target of the authorities.

43. Individuals who think that military parades are not necessary in Belarus were publicly deprecated by a representative of the Ministry of Defence as successors of the Nazis.¹²

44. Independent-minded journalists have been harassed for more than two decades and cannot work without an accreditation, which is difficult to obtain from the authorities. Activists and journalists who work outside the State system have to face administrative and judicial hurdles, which take the form of repeated summonses and heavy fines.

45. The mass demonstrations of February and March 2017 were an occasion for the authorities to remind journalists to refrain from covering unauthorized events of any magnitude. According to a report of the Belarusian Association of Journalists, as many as 123 violations of rights of journalists were recorded, including 96 detentions.¹³ Law enforcement officials in plain clothes started their crackdown on 12 March, making 18 arrests, compared with 13 for the whole of 2016. Many journalists were taken to court and fined for having illegally produced mass media materials¹⁴ and for sharing content with foreign media.¹⁵

46. The President himself engages in media matters, showing preferences for certain media over others.¹⁶ He repeatedly stresses that media professionals have "civic responsibility".¹⁷ Those who do not observe the official discourse are labelled as irresponsible and are used to justify the interference of the executive in media matters.

B. Freedom of association

47. Favoursing tight control over individual and group activities, the authorities of Belarus have a strict interpretation of the freedom of association. On 26 January 1999, the President issued Decree No. 2 on regulation of the activities of political parties, trade unions and other public associations, and improvement of control over those activities. The Decree gave a short period, until 1 August 1999, for public associations to register or reregister under the supervision of a State commission for registration, the composition of which was approved by the President.

48. The registration of political parties and public associations is authorized by the Ministry of Justice, and the registration of local associations is authorized by local executive committees, leaving a margin for the executive branch not to register any public association that would criticize the authorities. No new party has been allowed to register since 2000. The policy of refusing numerous applications for registration continued in 2016.¹⁸

¹¹ See <https://charter97.org/en/news/2017/7/25/257547/>.

¹² See <https://zapraudu.info/by/kollektivnoe-obrashhenie-v-sud-podpisat/>.

¹³ See <https://baj.by/en/analytics/media-problems-belarus-between-present-and-future>.

¹⁴ See www.svaboda.org/a/28425222.html; <http://belsat.eu/news/zhurnalistku-belsatu-volgu-chajchyts-ashtrafavali-na-40-bazavyyh-velichynyau/>; <http://spring96.org/en/news/87106>.

¹⁵ See <http://spring96.org/en/news/86878>.

¹⁶ See http://president.gov.by/en/news_en/view/president-attends-the-plenary-meeting-of-the-19th-world-congress-of-the-russian-press-16663/.

¹⁷ See http://president.gov.by/en/news_en/view/greetings-to-personnel-of-sovetskaya-belorussiya-newspaper-16777/.

¹⁸ See <https://drive.google.com/file/d/0Bwh6rJZ1JOWsV0lUV3JiOUx3UkE/view>.

49. The Act of 4 October 1994, amended in 2011, on public associations focuses exclusively on associations that are not political parties or trade unions. It provides for the right to establish associations (art. 2), which should operate in accordance with the Constitution, the above-mentioned Act and other pieces of legislation. Article 6 of the Act even provides for the non-interference of State authorities in the operations of public associations. However, the article also provides that non-governmental organizations must not interfere in the affairs of State authorities. That provision is equivalent to the automatic silencing of critical voices among non-governmental organizations and has become one of the main triggers for society-wide self-censorship.

50. It is not the Act on public associations or Presidential Decree No. 2 that contains provisions on the consequences for non-governmental organizations and political parties, be they registered or not, of conducting unauthorized activities, but the much-criticized article 193-1 of the Criminal Code, which provides for imprisonment of up to two years for any public activity that has not been authorized. The Special Rapporteur, together with other human rights mechanisms, has repeatedly called for that provision to be repealed and for a shift from the permission-based system of registration of public associations to a notification-based regime. The Special Rapporteur points in particular to the opinion on the compatibility with universal human rights standards of article 193-1 of the Criminal Code, adopted by the Venice Commission in October 2011, in which it is clearly stated that the article "restrict[s] the right to freedom of association in its essence" and "is incompatible with a democratic society".¹⁹ The Special Rapporteur considers the opinion to still be valid, especially as article 193-1 is used to eliminate the freedom of association and to legitimize repression.

51. The Special Rapporteur notes the trend among a number of non-governmental organizations to register as institutions of social entrepreneurship, as that type of association has been met with less apparent scrutiny by the authorities. Since the entry into force of Presidential Decree No. 5 of 31 August 2015, and in particular the amendment thereto of 4 March 2016, non-governmental organizations have stepped up their efforts to mobilize funding through social media platforms.²⁰ While such a trend is positive for the social embeddedness of those organizations, the permissiveness demonstrated by the authorities towards non-governmental organizations working on single social issues reveals a strategy to diminish the number of non-governmental organizations working on civil and political issues or to depoliticize their agenda in exchange for being allowed to function.

52. The overall system for the registration of associations has remained unchanged since 2011. The slight increase, by 2.5 per cent, in the number of registered non-governmental organizations in 2016 compared with 2015 does not reflect any easing of the hurdles. The Special Rapporteur continued to receive reports of refusals to register associations on petty grounds. Before documents for the registration of associations are submitted, the name of the institution should be pre-approved by the Ministry of Justice. In March 2016, the "For Statehood and Independence" non-governmental organization, a founder of which is a Nobel Prize in Literature winner, Svetlana Alexievich, was denied registration because the acronym representing its name was not exactly the same on the list of the founders as on the registration form.

53. Even non-governmental organizations wishing to work on social issues, such as gender, often face a content-based rejection. In June 2016, the Mahilyow

¹⁹ See [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)036-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)036-e).

²⁰ See www.actngo.info/article/organizacii-grazhdanskogo-obshchestva-belarusi-8-tendenci-2016-goda.

Regional Administration of Justice refused to register the "Rose" centre for gender studies, a public association, on the basis that recognizing gender discrimination in Belarus would contradict the norms on equality of men and women, which are set forth at the legislative level. The non-governmental organization's intention to conduct gender-specific monitoring, collection and analysis of data on social, economic and other fields was deemed to contradict existing legislation, as the "implementation of gender policies is carried out by respective authorized State organs".²¹

C. Freedom of peaceful assembly

54. The mass repression during the events of February and March 2017 and the fate of the marches planned to commemorate 1 May were emblematic of the restrictions imposed by article 23-34 of the Code of Administrative Offences and article 369-3 of the Criminal Code. All assemblies were strictly controlled by the executive committees, which, when they authorized the gatherings, included in their decisions so many unacceptable requirements to the organizers that the authorizations became unworkable.

55. The authorities exercised their repression in a preventive manner²² by arresting activists before the marches took place. They also arbitrarily arrested participants during and after the demonstrations. The judicial and administrative systems of Belarus proved to be ready to deal with the high numbers of people arrested, since as many as 900 individuals who participated or wished to participate in the demonstrations were tried in only three weeks.²³ Dozens of individuals were "preventively" detained and fined, making them unavailable for the demonstrations planned for 25 March and 1 May 2017. The sentences condemning participation in earlier demonstrations served as a deterrent for future participation in peaceful assemblies.

56. To that same effect, the authorities harassed prominent figures of civil society. For instance, a famous video blogger, Maksim Filipovich, spent more than a month in prison, serving no fewer than three convictions.²⁴

57. The repression targeted not only individuals but also entities, in particular political parties and similar movements. The BPF Party, the United Civil Party and the "For Freedom" movement received warnings from the Ministry of Justice for having participated in the mass gathering on 25 March 2017 in Minsk. The Supreme Court has the power to liquidate a political party one year after the issuance of a warning by the Ministry of Justice if the warning has not been addressed by the party (art. 70, Act on Political Parties).

58. Trade unions also have to comply with the obligation to obtain an authorization to organize peaceful demonstrations. The Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization, in its report of 2017, expressed its regret, not for the first time, that the Government of Belarus had failed to provide its comments on the new allegations of refusal of authorization for demonstrations by trade unions and to reply to all outstanding allegations of refusal and had not provided any information

²¹ See <https://drive.google.com/file/d/0Bwh6rJZ1JOWsV0lUV3JiOUx3UkE/view>.

²² See <http://spring96.org/en/t:aws/86878>.

²³ See <http://spring96.org/en/t:aws/86596>.

²⁴ See <http://spring96.org/en/t:aws/86878>.

on the steps taken to investigate the cases of refusal with the organizations concerned.²⁵

59. The Special Rapporteur underlines the role of the Government-dependent judicial system in the repression of the right to peaceful assembly. For example, a court in Navapolatsk, which had begun to look into the arguments of a human rights defender against the local authorities' decision not to authorize a demonstration, decided to abandon the consideration of the case after a representative of the same authorities claimed, falsely, that the court lacked jurisdiction.²⁶ Similarly, a judge in Mahilyow arbitrarily decided to conduct behind closed doors the hearing of an activist who had called for participation in an unauthorized demonstration on 1 May.²⁷ Courts also rejected the appeals of the political parties that had received warnings from the Ministry of Justice. In general, the lack of goodwill on the part of the judiciary with respect to considering complaints about violations of constitutional rights was patent.²⁸ Condemnations continue to be made, as shown by the sentences of administrative detention handed down against three activists after the OSCE Parliamentary Assembly.

60. The Special Rapporteur personally witnessed the interaction of restrictive laws and the lack of independence of the judiciary. At the Frunzenski Court in Minsk on 4 July, the Special Rapporteur was in the audience at the trial of a long-time human rights activist, Oleg Volchek, who was accused of participating in the demonstrations in March. The charge was based solely on a claim by an anonymous police agent and was produced by the prosecution many weeks after the demonstrations. Mr. Volchek was first sentenced to a 13-day prison term in absentia and, after his lawyer filed a complaint, a retrial was ordered while he was still abroad. His defence consisted of stating that he was not in Minsk at the time of the demonstrations. Mr. Volchek named his witnesses and informed the judge of their presence in the room. Even though Mr. Volchek's statement should have prompted an inquiry into the trustworthiness of the charge, the judge questioned the witnesses' integrity, assuming that they had wilfully not presented themselves to the prosecution before the court session. It turned out that they could not have done so because neither Mr. Volchek nor his lawyer had been informed of the results of the reinvestigation of the case, and they were notified by the Court of the ongoing retrial only a couple of days before the July session.²⁹ The prosecutor did not dispute this fact, but still upheld the charge when questioned by the judge. The judge ordered a break, left the courtroom for 20 minutes and, after returning, refused to register the two witnesses and dismissed them without any explanation. The trial went on for six hours in the heat without air conditioning, and the judge ordered breaks and left the room every time before making procedural rulings. Eventually, Mr. Volchek, a veteran who was wounded in the Soviet Union's war in Afghanistan in the 1980s, fell ill from dehydration, blood hypertension and heart arrhythmia, lost consciousness for a few minutes and was carried away by an emergency car. However, the judge did not postpone the trial and sentenced Mr. Volchek in absentia to a hefty fine for the original charge of participating in the demonstration.

²⁵ See www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_543646.pdf.

²⁶ See <http://spring96.org/en/news/86878>.

²⁷ See <http://spring96.org/en/news/87106>.

²⁸ See <http://spring96.org/be/news/86998>.

²⁹ See www.advocatenvooradvocaten.nl/12753/belarus-trial-against-oleg-volchek/.

D. Torture and ill-treatment

61. The use of torture and ill-treatment in Belarus to obtain so-called confessions and intimidate or silence opponents was widespread until the beginning of the 2010s. A number of cases of torture and ill-treatment that led to the death of the victim are pending before international mechanisms, while the judicial system of Belarus still refuses to thoroughly investigate such allegations. The Investigative Committee of Minsk decided, in June 2017, to stop the investigation into the death of Aleh Bahdanau, which occurred in January 2016 while he was in detention.

62. The authorities of Belarus seem to have restricted the use of torture by law enforcement agents. As another example of the cyclical aspect of repression in Belarus, the events in February and March 2017 gave occasion for State agents to resort to torture. The Special Rapporteur deplores this development.

63. Reports show that a number of individuals who took part in the demonstrations against Presidential Decree No. 3 were subjected to ill-treatment during their arrest and detention, which, the Special Rapporteur recalls, was arbitrary. Reports also show that some cases could amount to torture, such as those involving beatings, the use of electroshock, the privation of water, the refusal of medical care, the obligation to wear a bag on the head during interrogation, and wakening at night. Reports point in particular to the detention facilities of the State Security Committee in Minsk. A famous human rights defender from the "Viasna" non-governmental organization, Tatsiana Reviaka, submitted a complaint to the Office of the Prosecutor in Minsk about the conditions in which she had been arrested on 26 March and her subsequent treatment on police premises, where she had suffered physical and psychological abuse. Other activists were reportedly beaten by the police and had their hands bound tight with handcuffs for several hours. The situation in the detention facility of the executive committees of Homiel and Tsentralny districts seemed to have been particularly bad, as detainees were deprived of heating or running water to take a shower for several days. Owing to the magnitude of the degrading and ill-treatment and the high number of alleged cases of torture, a human rights defender, Ales Bialiatski, sent a public complaint to the Prosecutor General.³⁰ The Prosecutor General, however, refused to conduct an inquiry. This exemplifies, in the Special Rapporteur's opinion, the unwillingness of the State authorities to acknowledge systemic issues.

64. The Special Rapporteur is aware that, following the complaints of many individuals about the conditions in which they were detained on police premises, inspections were launched by the Office of the Prosecutor, notably in Slutsk district, and, as a consequence, certain improvements were noted. However, the efforts to address some shortcomings were not made in a concerted manner, although the extent of the complaints, both substantively and geographically, would command a nationwide review of conditions of detention, especially following the massive crackdown of March 2017.

65. Similarly, the Special Rapporteur is aware of a case in which the decision of the Investigative Committee not to investigate allegations of ill-treatment was appealed with success.³¹ The complainant and his wife, however, were subsequently harassed by State officials, who asked questions about their relationship with the non-governmental organization that had helped them to formulate the appeal.

66. Confessions obtained through torture, ill-treatment or harassment may sometimes lead to the signing of cooperation agreements, making the victim

³⁰ See <http://spring96.org/be/news/86998>.

³¹ See <http://spring96.org/en/news/87524>.

beholden to the State Security Committee and, therefore, obliged to pass on sensitive information on the activities of fellow human rights defenders or activists.³²

67. The Special Rapporteur remains concerned about the situation of a Russian citizen, Murad Amriev, who was deported by the authorities of Belarus to the Russian Federation despite several calls not to do so, owing to the high risk that Mr. Amriev would be tortured there.

E. Death penalty

68. Article 24 of the Constitution stipulates that, until it is abolished, the death penalty may be used as an exceptional penalty for grave crimes. The crimes punishable by the death penalty are set out in the Criminal Code.

69. The Government of Belarus has, for a long time, been the only Government in Europe and among the former republics of the Soviet Union to apply deprivation of life as a legal punishment. On countless occasions, United Nations mechanisms and human rights organizations have, in vain so far, decried this and called on the country to join the growing human rights consensus regarding the need to respect the right to life, even in the case of grave crimes.

70. The authorities of Belarus have an ambiguous approach to the abolition of the death penalty. The President, in his address to the OSCE Parliament Assembly in July 2017, stated that "not a single State can go against the will of its people when the overwhelming majority voted to preserve it in a referendum. No single civilized European country can do so". At the same time, he added that Belarus needed time to abolish the death penalty and that he was sure that the authorities of Belarus would gradually find a solution to the issue.

71. Although the abolition of the death penalty is envisaged in the Constitution, there is no time frame for it to become a reality. The conferences on the issue organized by the country, with the support of partners, had no outcome in terms of a potential decision to abolish capital punishment.

72. The President often refers to the "will of the people of Belarus", as expressed in the multi-question referendum of 24 November 1996 on ending capital punishment. Voters rejected the proposal to abolish capital punishment by more than 80 per cent. However, at the time of the referendum, the maximum length of imprisonment was 15 years. The Criminal Code was amended in December 1997 to introduce life sentences. The Special Rapporteur therefore believes that citing the referendum as a reason not to abolish capital punishment is unfounded.

73. Numerous Heads of State or Government have decided on their own to end capital punishment, showing leadership. In a country where practically all legal aspects of life are decided by the head of the executive, the absence of a clear expression by the President of Belarus of his determination to put an end to capital punishment in fact constitutes an absolute barrier. Observers see this lack of resolve not only as unrelated to the merit of the issue, but also as tied to the fact that many of the President's autocratic entitlements in the Constitution were also obtained through the same referendum to which he refers as an obstacle to abolition.

74. At the time of reporting, the Special Rapporteur was aware of three death sentences handed down since the beginning of 2017. Aliaksei Mikhalenia was sentenced to death by the regional court of Homiel on 17 March. The Supreme Court rejected his appeal of the sentence on 30 June. Ihar Hershankou and Siamion

³² See <http://belarusdigest.com/story/the-belarusian-kgb-recruiting-from-civil-society/>.

Berazhny were sentenced to death on 21 July by the regional court of Mahilyow. Siarhei Vostrykau was executed in Belarus sometime in April. Two individuals, Kiryl Kazachok and Aliaksei Mikhalenia, were on death row awaiting execution at the time of reporting. The Special Rapporteur once again urges the authorities to at least commute death sentences into life sentences.

F. Arbitrary arrest and detention and political prisoners

75. In his previous report to the General Assembly, the Special Rapporteur pointed to what appeared to be a change in the *modus operandi* of the repression of unauthorized gatherings (A/71/394 para. 77). The systematic arbitrary arrest of individuals participating in public activities critical of public policies was replaced, without any change made in the underlying laws, by the systematic application of heavy fines, the payment of which was so difficult for most of those fined that they either ended up in prison for non-payment of the fine or saw their property confiscated.

76. The scale and organization of the mass arrests in the wake of the demonstrations in February and March 2017 had not been seen since December 2010, when the authorities cracked down on protesters and sent hundreds of them to jail. According to the Criminal Procedure Code of Belarus, the authorities are not obliged to give reasons for detention, which is contrary to article 9 of the International Covenant on Civil and Political Rights.

77. The premeditated nature of the crackdown in 2017 is shown by the fact that hundreds of peaceful demonstrators were arbitrarily arrested in a matter of days throughout the country, often by law enforcement officials in plain clothes. As in 2010, human rights activists' homes were raided, and trade union members were brutally interrogated and harassed and their information technology equipment was seized.

78. The Special Rapporteur holds the view that the cyclical recurrence of the massive physical abuse of people who decided to exercise their rights, accompanied by the taking of new political prisoners, is partly caused by and partly the aim of the centralization of decision-making and the unchanged depriving character of the legal system, as opposed to a protection system. Those laws are not consistent with basic human rights standards, given that, based on their literal meaning, a huge part of the population would be punishable for unauthorized public activities in any given period. In fact, a large part of the population would be *de jure* criminals based on a strict reading of the laws criminalizing unauthorized public activities. Of course, keeping political opponents and Government-independent activists incarcerated at all times would make the claim of Belarus that it adheres to human rights standards indisputably void. The criminal laws are designed to cover public life while creating fear among large segments of the population, thereby laming otherwise normal day-to-day civic activities. The authorities sometimes relent in their use and then cyclically demonstrate the strength of centralized power to the population, maintaining the restrictive order through harassment, arbitrary arrest and short-term detention.

79. The authorities made use of various provisions to try to silence human rights defenders, activists and ordinary citizens, including through repeated periods of administrative detention, house arrests and criminal charges claiming hooliganism, the organization of riots or the creation of illegal armed groups. The executive branch, assisted by the judiciary, used the latter two charges to preventively arrest and subsequently fine prominent figures of the opposition, such as the leader of the United Civil Party, Anatol Liabedzka, the co-leaders of the Belarusian Christian

Democracy, Pavel Seviarynets and Vital Rymasheuski, the Chair of the "For Freedom" movement, Yury Hubarevich, and a former presidential candidate, Mikalai Statkevich. Members of non-governmental organizations were also arbitrarily arrested and charged, including Pavel Levinau of the Belarusian Helsinki Committee (one of the few human rights non-governmental organizations accredited by the Government) and as many as 57 individuals, including foreign nationals, during the raid on the premises of "Viasna" on 25 March 2017, when the non-governmental organization was holding a meeting on how to conduct peaceful assemblies.

80. Most of the individuals detained were released after several hours without charges and without any explanation as to why they had been released. Others were sentenced to administrative detention ranging from 3 to 25 days (the maximum length) to prevent them from participating in subsequent rallies. However, 16 individuals were arrested and detained in pretrial detention facilities of the State Security Committee and the Ministry of the Interior, on the fabricated grounds that they were creating an illegal armed group. They were all released by the end of June, but the case has not been closed.

81. The Special Rapporteur is particularly concerned by the case of Dzmitry Palienka, an environmental and civil rights activist who was arbitrarily arrested on 29 April 2016, after participating in a peaceful demonstration to promote cycling. Mr. Palienka has been the subject of several arbitrary detentions since 2014.³³ The two-year sentence handed down against him in 2016 had been suspended, but the suspension was overturned by a Minsk court in April 2017 on the grounds that he was guilty of "minor hooliganism" (art. 17.1, Code of Administrative Offences) for shouting "Shame" when the verdict in a protester's case was announced.

82. Another critic of the Government remains in prison in Belarus. On 10 July 2015, Mikhail Zhamchuzhny was sentenced to 6.5 years of imprisonment under a strict regime for "incitement to disclosure of official secrets". His sentence also bans him from holding positions relating to the implementation of organizational and administrative duties for a period of two years and eight months.

83. The Special Rapporteur is concerned about reports of the arbitrary detention and harassment of prominent trade unionists and members of trade unions. The Belarusian Independent Trade Union of Radio and Electronic Industry Workers and the Belarus Independent Trade Union were at the forefront of the protests against Presidential Decree No. 3 and collected tens of thousands of signatures. At the beginning of August 2017, State officials conducted searches in the offices and private homes of several members of those trade unions and confiscated their information technology equipment. The Chair and the chief accountant of the Trade Union of Radio and Electronic Industry Workers, Henadz Fiadynich and Ihar Komlik, were arrested on 2 August on the fabricated grounds of tax evasion through the opening of bank accounts in foreign countries, leading to personal enrichment. Mr. Fadynich was released the same day, while Mr. Komlik remained in detention. The charges against both activists are still open. The Special Rapporteur shares the opinion of the Observatory for the Protection of Human Rights Defenders that their arrest was purely politically motivated, as the same charges were used in 2011 against Mr. Bialiatski, who was sentenced to 4.5 years of detention, which was recognized as arbitrary by the Working Group on Arbitrary Detention.³⁴

³³ See <https://charter97.org/en/news/2016/7/27/215528/>.

³⁴ See <http://spring96.org/en/news/87741>.

G. Economic and social rights

84. Belarus is the only country of the former Soviet Union that did not undergo a process of privatization of key sectors of the economy. The Special Rapporteur, however, does not believe that Belarus is immune to oligarchy and corruption and their consequences for the enjoyment of human rights.

85. The demonstrations of February and March 2017 were symptomatic of the disconnect between the claim by the authorities that the centralized economy is able to create well-being and the social reality of hundreds of thousands of people whose lives are affected by harsh economic policies.

86. It is estimated that some 470,000 individuals in Belarus were directly exposed to the "anti-parasitism" tax introduced by Presidential Decree No. 3, the aim of which was to penalize those who work fewer than 183 days but are not registered as unemployed. The "anti-parasitism" act reflects a resurgence of the equity of Soviet times whereby the State is supposed to provide work for all, and those who do not have a job are therefore regarded as living at the expense of others and endangering social cohesion. Such a law is logistically inconceivable without extreme centralization and State ownership of the economy.

87. In the Special Rapporteur's opinion, the "anti-parasitism" act and tax were partly designed to target not only "entrepreneurial dissidents" who carry out unregistered economic activities but also members of civil society who are working in unauthorized positions, such as non-governmental organization and trade union activists, independent journalists and artists.

88. The official unemployment rate is 1 per cent, which is a highly unrealistic number given the economic situation of the country.³⁵ The illusion of the absence of unemployment and, therefore, of the absence of poverty, regarding which no data are available, is parallel to the illusion of the absence of dissenting political views conveyed by the pluralism-free Parliament.

89. Trade unions, as explained above, are subject to the overall regulation concerning the establishment of public organizations. The Committee of Experts on the Application of Conventions and Recommendations recalled in its report of 2017 that such a restrictive approach discourages trade unions from registering. The Special Rapporteur notes that the Government of Belarus has been ignoring the Committee's recommendations to change the law so as to liberalize the constitution of trade unions and hence promote labour and social rights.

90. Belarus receives the worst mark ("no guarantee of rights") for respect for workers' rights in the Global Rights Index of the International Trade Union Confederation.³⁶

91. The Special Rapporteur continued to receive reports of violations of economic and social rights. He recalls the tragic case of the schoolchild, Viktoryia Papcenia, who died after being hit by a truck while collecting potatoes as part of her *subbotnik*, a form of forced labour introduced in the Soviet era whereby State employees and students are legally encouraged but in practice obliged to perform pro bono communal or production work. According to the verdicts in the case, only two of the 13-year-old girl's teachers and the driver of the truck were found responsible for the accident. The Special Rapporteur recalls that such forced labour is organized by the local branches of the Government (executive committees) and that the unfortunate girl was collecting potatoes on a State-owned farm.

³⁵ See www.ilo.org/ilostatcp/CPDesktop/?list=true&lang=en&country=BLR.

³⁶ See <http://survey.ituc-csi.org/?lang=en>.

H. Non-discrimination

92. Belarus has yet to adopt a specific anti-discrimination act that would penalize discriminatory acts against individuals on the grounds of their gender, race, ethnic group, sexual orientation, religious belief or mental or physical disability. It flows from the authoritarian nature of its governance that the executive branch both morally and legally retains the prerogative to define what constitutes "normal" and "non-mainstream". Large portions of society are effectively denied equal treatment or the specific positive treatment needed for the equal enjoyment of rights. The refusal to recognize differences and the related discrimination exemplify the executive branch's vision of a centrally guided, homogeneous Belarusian population, ostensibly based on "traditional values".

1. Gender

93. The Special Rapporteur refers to his most recent report to the Human Rights Council, which describes key elements of women's human rights in Belarus, as analysed by the Committee on the Elimination of Discrimination Against Women in October 2016.

94. The amount of discriminatory language used by high-ranking political figures testifies to the generally poor state of women's rights. The situation of women in the workplace is of particular concern. For several years, the Committee of Experts on the Application of Conventions and Recommendations has been pointing to the "historical attitudes towards the role of women in society along with stereotypical assumptions regarding women's aspirations" to explain the tendency among women to choose low-income occupations.³⁷ The Committee once again deplored the Government's lack of responses to its recommendations concerning equal remuneration. The Special Rapporteur underlines the Government's continuing disregard of issues relating to equal opportunities for school-age boys and girls and subsequent inequalities in the workplace.

2. Religious groups

95. Despite the fact that freedom to profess and practise any religious belief is granted by the Constitution, article 16 thereof prohibits religious activities that are "directed against the sovereignty of the Republic of Belarus, its constitutional system and civic harmony, or ... impede the execution of State, public and family duties by its citizens or are detrimental to their health and morality". The vague nature of the prohibition leaves enough space for the executive branch to interpret restrictions at its full discretion. In addition, restrictive provisions of the Act of 2002 on religion and the concordat of 2003 between the Belarusian Orthodox Church and the Government serve as additional bases for the Government to impose limits on religious freedom. Moreover, the privileged status and the increasing and "determining role" of the Belarusian Orthodox Church in the country are of concern, as they heighten religious discrimination.³⁸

96. Religious groups have to register in order to be able to carry out any religious activities. All activities of unregistered groups are banned by law. Furthermore, prior authorization is needed for the organization of events beyond the premises of religious groups, including proselytizing. The Government is therefore continuing

³⁷ See www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_543646.pdf.

³⁸ See Department of State of the United States of America, "International religious freedom report for 2016: Belarus", Available from www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2016&dlid=268792#wrapper.

the practice of fining and detaining individuals involved in unauthorized events organized by faith groups. Complex registration requirements that include broad grounds for refusal remain one of the main obstacles to the conduct of religious activities. In addition, the registration process for minority religious groups requires the disclosure of their members, which may deter individuals from exercising their religious freedom. As a result, many religious groups are disinclined to register for fear of State persecution.

97. The Government continues to apply discriminatory policies to what they describe as "non-traditional religious groups". Registration is still being refused for several Protestant religious communities. The continuous denials of permission for Muslim and Protestant clergy and clergy of other "non-traditional faiths" to visit inmates in prison, which is not the case for clergy of the Belarusian Orthodox Church or the Roman Catholic Church, are a clear example of discrimination. In educational facilities, students' textbooks reflect a discriminatory attitude towards "non-traditional religious groups" that perpetuates stereotypes and intolerance.

V. Conclusions and recommendations

98. The Special Rapporteur concludes that the assumption of virtually all powers by the executive branch, chiefly the President and the presidential administration, is one of the main structural reasons for both the systemic abuse of human rights and the cyclical waves of mass repression in the country. Although the Constitution provides for the separation of powers and respect for human rights, the reality is a monolithic power structure with laws and governance aimed at maintaining the concentration of powers and an absence of effective human rights guarantees. It also explains why positive changes can happen only temporarily and at the margins, while the core of the system of governance remains counter-democratic and erupts from time to time into massive crackdowns against those attempting to exercise their rights.

99. The absence of an effective Parliament, an independent judiciary, a national human rights institution compliant with the principles relating to the status of national institutions for the promotion and protection of human rights, a specific anti-discrimination law and a notification-based system of registration of public entities, as opposed to the existing permission-based system, forms the bedrock of the overall human rights policy in Belarus.

100. The severe crackdown following the peaceful demonstrations of February and March 2017 illustrated the cyclical nature of human rights violations in Belarus, characterized by an unchanging, permission-based, repressive legal framework, implemented by a guided judiciary and accompanied by repetitive acts of intimidation and harassment by law enforcement officials.

101. Despite repeated calls from various human rights mechanisms and from its partners over the past two decades to bring the law into line with its international human rights commitments and put an end to practices that violate those standards, the executive branch in Belarus has been solidifying the systemic restrictions of human rights, wary of tackling their core function of maintaining the entrenched power structure. The inter-agency action plan on the implementation of select recommendations of a few treaty bodies and the universal periodic review should be read against that background. The 100 activities listed therein, even if fully implemented, would not significantly improve the human rights record of Belarus.

102. In listing these deficiencies, the Special Rapporteur calls attention to the paradoxical fact that the very centralized governance structures in Belarus would readily offer themselves for an initial leap towards improvement in the human rights situation, even though sustaining the improvement would require the institutionalization of democratic power-sharing and the active participation of all political and civic forces concerned.

103. The Special Rapporteur encourages civil society actors and human rights defenders to continue their impressive work in a rather hostile environment. He calls once again on the authorities of Belarus to cooperate with the mandate, even in an incremental manner, and, in addition to the recommendations that he made in his previous reports, further recommends that the authorities of Belarus:

(a) Drop all charges against those who peacefully demonstrated against Presidential Decree No. 3, including those accused of having formed an illegal armed group;

(b) Abolish Presidential Decree No. 3, as it provides for discrimination against certain types of workers;

(c) Release the trade unionists and political activists currently held in custody and drop the charges against them, as they are politically motivated;

(d) Withdraw article 193-1 of the Criminal Code, which penalizes any public activity of non-registered organizations;

(e) Conduct a thorough review of all legislation and make it compliant with the human rights standards to which Belarus is a party;

(f) Engage constructively with the Committee on the Elimination of Racial Discrimination during its review scheduled for the ninety-fourth session of the Committee;

(g) Abolish the death penalty, or at least adopt a moratorium without further delay;

(h) Establish a national human rights institution that is compliant with the principles relating to the status of national institutions for the promotion and protection of human rights;

(i) Demonstrate to partners concrete progress on the systemic issues listed above;

(j) In that regard, consolidate the inter-agency action plan by involving human rights non-governmental organizations, even those that are not accredited, in its development and the monitoring of its implementation;

(k) Stop harassing human rights defenders, members of civil society and independent journalists.

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Oceans and the law of the sea: oceans and the law of the sea

Report on the work of the Ad Hoc Working Group of the Whole on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects

Letter dated 22 September 2017 from the Co-Chair of the Ad Hoc Working Group of the Whole addressed to the President of the General Assembly

I have the honour to transmit to you the attached report on the work of the Ad Hoc Working Group of the Whole on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects, which met at United Nations Headquarters from 6 to 8 September 2017, pursuant to paragraph 317 of General Assembly resolution 71/257. Section III of the report sets out the agreed recommendations of the Ad Hoc Working Group of the Whole to the General Assembly at its seventy-second session.

I kindly request that the present letter and the report be circulated as a document of the General Assembly under the agenda item entitled "Oceans and the law of the sea".

(Signed) Juliette Babb-Riley

* A/72/251.



Report of the Ad Hoc Working Group of the Whole on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects

I. Report of the Ad Hoc Working Group of the Whole

1. The ninth meeting of the Ad Hoc Working Group of the Whole on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects was convened pursuant to paragraph 317 of General Assembly resolution 71/257. The meeting of the Working Group was held at United Nations Headquarters in New York from 6 to 8 September 2017.
2. The Co-Chair of the Working Group, Juliette Babb-Riley (Barbados), opened the meeting, noting that her Co-Chair, Carolyn Schwalger (New Zealand), had left New York to take up another assignment. The Assistant Secretary-General for Legal Affairs, Stephen Mathias, delivered opening remarks on behalf of the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel.
3. Representatives of 31 Member States,¹ one non-member State,² five intergovernmental organizations and other bodies³ and two non-governmental organizations⁴ attended the meeting.
4. The following members of the Group of Experts, established pursuant to paragraph 287 of resolution 70/235, also attended the meeting: Chul Park (Republic of Korea), Renison Ruwa (Kenya), Alan Simcock (United Kingdom of Great Britain and Northern Ireland) and Anastasia Strati (Greece). Renison Ruwa and Alan Simcock, in their capacity as Joint Coordinators of the Group of Experts, gave presentations on behalf of the Group of Experts.
5. The following supporting documentation was available to the meeting: a provisional agenda, an annotated provisional agenda; a format; a proposed organization of work; elements for guidelines for workshops to assist the first round of workshops of the second cycle of the Regular Process; and revised guidance for contributors — part I, prepared pursuant to the request of the General Assembly in paragraph 310 of its resolution 71/257.
6. The Working Group adopted the agenda (see sect. II below) and agreed on the organization of work as proposed by the Co-Chair.
7. Under agenda item 4, the Co-Chair presented the report of the Bureau of the Working Group, which addressed the following: the launch of the three technical abstracts of the first World Ocean Assessment on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction; on the ocean and the United Nations Sustainable Development Goals under the 2030 Agenda for Sustainable Development; and on the impacts of climate change and

¹ Angola, Argentina, Bangladesh, Brazil, Bulgaria, Canada, China, Colombia, Côte d'Ivoire, Ecuador, Finland, Greece, Guinea, India, Iraq, Jamaica, Japan, Kenya, Malta, Mauritius, Mexico, Netherlands, New Zealand, Republic of Korea, Senegal, Singapore, Slovakia, Slovenia, Spain, Togo and United States of America.

² Holy See.

³ European Union, Department of Economic Social Affairs, United Nations Educational, Scientific and Cultural Organization, Intergovernmental Oceanographic Commission and United Nations Environment Programme.

⁴ Inter Manager and Islands First.

related changes in the atmosphere on the oceans, at a high-level event on 5 June during the United Nations Conference on Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development, together with the official release of the publication of the First Global Integrated Marine Assessment (first World Ocean Assessment); awareness-raising activities to promote the technical abstracts and the Assessment; progress in preparing for the hosting of regional workshops; progress in the designation of national focal points; progress in the constitution of the Pool of Experts; and the continued need for additional nominations to the Group of Experts. A number of delegations made statements under this agenda item, welcoming the report and the intersessional work of the Bureau and expressing appreciation to the Group of Experts for their work in preparing the technical abstracts, as well as appreciation for the support of the secretariat. The Working Group took note of the report.

8. Under agenda item 5, a number of delegations highlighted the importance of the regional workshops for the successful implementation of the programme of work for the second cycle of the Regular Process for the period 2017-2020 and welcomed the offers to host such workshops as well as of the schedule for the first round of workshops in 2017, as follows: in Lisbon in September 2017, by the Government of Portugal; in Auckland, New Zealand, in October 2017, by the Government of New Zealand; in Camboriú, Brazil, in November 2017, by the Government of Brazil; in Bangkok in November 2017, by the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization through the regional secretariat for its Sub-Commission for the Western Pacific; and in Zanzibar, United Republic of Tanzania, in December 2017, by the United Nations Environment Programme. The need for hosts for the second round of workshops in 2018 was also noted.

9. During its deliberations on agenda item 6, the Working Group considered the elements for an outline for a second world ocean assessment or assessments, prepared by the Group of Experts, which had been presented to the Bureau during the intersessional period. Following a presentation by the Joint Coordinators, the meeting agreed that there should be one comprehensive assessment as an output of the second cycle of the Regular Process. The meeting noted that the elements would be presented to the first round of workshops in 2017 in order to facilitate the preparation phases and the collection of regional-level information and data for the preparation of the assessment of the second cycle.

10. Under agenda item 7, and pursuant to paragraph 310 of General Assembly resolution 71/257, the Working Group considered, and took note of, the revised guidance for contributors — part I, for the Group of Experts, prepared by the Group of Experts and presented to the Bureau of the Ad Hoc Working Group of the Whole during the intersessional period. Some proposals were made by delegations and the meeting agreed that the Group of Experts would finalize the guidance accordingly.

11. Under agenda item 8, the Working Group considered capacity-building activities to be undertaken pursuant to the programme of work for the period 2017-2020 for the second cycle of the Regular Process, noting that this was one of the core objectives of the Regular Process. The progress in the development of a capacity-building inventory by the secretariat was noted. Also discussed at the meeting were priorities for needs-based capacity-building and modalities for the multi-stakeholder dialogue and capacity-building partnership event planned to be held in early December 2017.

12. Under agenda item 10, the Director of the Division for Ocean Affairs and the Law of the Sea reported on the status of the voluntary trust fund for the purpose of supporting the operations of the Regular Process and noted that, since the previous

meeting of the Ad Hoc Working Group of the Whole, the trust fund had received a contribution from New Zealand, as well as a pledge for a contribution from the Republic of Korea. Delegations were encouraged to continue to contribute to the trust fund pursuant to the appeal from the General Assembly in paragraph 315 of its resolution 71/257.

Adoption of recommendations to the General Assembly at its seventy-second session

13. Under agenda item 9, the Working Group also considered the draft recommendation to the General Assembly, which incorporated recommendations adopted by the Ad Hoc Working Group of the Whole at its eighth meeting, held on 17 and 18 April 2017, and addressed the follow-up actions to the guidance to the Bureau, the Group of Experts and the secretariat adopted during the eighth meeting.

14. The Working Group then adopted by consensus the draft recommendations for the consideration of the General Assembly at its seventy-second session (sect. III).

II. Agenda of the ninth meeting of the Ad Hoc Working Group of the Whole

15. The Ad Hoc Working Group of the Whole adopted the agenda set out below.

1. Opening of the meeting.
2. Adoption of the agenda.
3. Organization of work.
4. Report of the Bureau of the Ad Hoc Working Group of the Whole.
5. Regional workshops to assist the second cycle of the Regular Process.
6. Elements for an outline for a second world ocean assessment or assessments.
7. Guidance for contributors.
8. Capacity-building.
9. Adoption of recommendations to the General Assembly at its seventy-second session.
10. Other matters.
11. Closure of the meeting.

III. Recommendations of the Ad Hoc Working Group of the Whole to the General Assembly at its seventy-second session

16. The Ad Hoc Working Group of the Whole recommends to the General Assembly that it:

(a) Reiterate the need to strengthen the regular scientific assessment of the state of the marine environment in order to enhance the scientific basis for policymaking, and reaffirm the importance of the First Global Integrated Marine Assessment (first World Ocean Assessment) as the outcome of the first cycle of the Regular Process;

(b) Recall the importance of making Governments, United Nations system organizations, bodies, funds and programmes, intergovernmental organizations, the

scientific community and the general public aware of the first World Ocean Assessment and the Regular Process, and recognize with appreciation the activities undertaken in this regard during various intergovernmental meetings, including the United Nations Conference to Support the Implementation of Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development, held from 5 to 9 June 2017 at United Nations Headquarters, in particular those of the secretariat of the Regular Process;

(c) Recall that, in the first cycle, the scope of the Regular Process focused on establishing a baseline, and decide that the scope of the second cycle would extend to evaluating trends and identifying gaps;

(d) Welcome the holding of the eighth and ninth meetings of the Ad Hoc Working Group of the Whole, on 17 and 18 April 2017 and from 6 to 8 September 2017, respectively, in accordance with paragraph 317 of General Assembly resolution 71/257 of 23 December 2016;

(e) Take note of the recommendations and guidance adopted by the Ad Hoc Working Group of the Whole at its eighth meeting and endorse the recommendations adopted by the Ad Hoc Working Group of the Whole at its ninth meeting;

(f) Take note with appreciation of the technical abstracts of the first World Ocean Assessment on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction; on the ocean and the Sustainable Development Goals under the 2030 Agenda for Sustainable Development; and on the impacts of climate change and related changes in the atmosphere on the ocean, prepared in accordance with the programme of work for the period 2017-2020 for the second cycle of the Regular Process;

(g) Also note with appreciation that advance unedited copies of the abstracts were made available to the Preparatory Committee established by General Assembly resolution 69/292: Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction; the eighteenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea; and to the United Nations Conference to Support the Implementation of Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development;

(h) Recognize with appreciation the work of the members of the Group of Experts of the Regular Process with respect to the preparation of the technical abstracts, as well as the contribution of a number of members from the writing teams of the Pool of Experts of the first cycle of the Regular Process, in accordance with paragraph 309 of resolution 71/257, to this exercise;

(i) Recall that the Regular Process shall be overseen and guided by the Ad Hoc Working Group of the Whole, and decide that the Working Group shall facilitate the delivery of the outputs of the second cycle as outlined in the programme of work for the period 2017-2020 for the second cycle of the Regular Process;

(j) Recognize with appreciation the important role of the Co-Chairs and the Bureau of the Ad Hoc Working Group of the Whole in providing guidance during the intersessional periods, including in the implementation of the second cycle of the Regular Process;

(k) Request the Bureau to continue to implement the decisions and guidance of the Ad Hoc Working Group of the Whole during the intersessional period.

including by providing oversight of the delivery of the programme of work for the period 2017-2020 for the second cycle of the Regular Process;

(l) Take note of the endorsement by the Ad Hoc Working Group of the Whole of the terms of reference and working methods of the Group of Experts for the second cycle of the Regular Process, prepared in accordance with paragraph 310 of resolution 71/257, and attached as an annex to the report of the eighth meeting of the Ad Hoc Working Group;

(m) Take note of the mechanism for the establishment of the Pool of Experts for the second cycle of the Regular Process developed by the Bureau of the Ad Hoc Working Group of the Whole in accordance with paragraph 311 of resolution 71/257, and attached as annex I to the present report, and encourage the appointment of experts to the Pool of Experts in accordance with the mechanism;

(n) Welcome the expressions of interest of individuals who served in the Pool of Experts during the first cycle of the Regular Process to serve in the Pool of Experts for the second cycle;

(o) Take note of the terms of reference for national focal points developed by the Bureau of the Ad Hoc Working Group of the Whole and attached as annex II to the present report;

(p) Welcome the designation by States of national focal points pursuant to paragraph 312 of resolution 71/257 and urge States that have not yet done so to designate their national focal points as soon as possible;

(q) Urge regional groups that have not yet done so to appoint experts to the Group of Experts in accordance with paragraph 287 of resolution 71/257, taking into account the need to ensure geographical distribution and adequate expertise in socioeconomic disciplines;

(r) Take note of the adoption by the Bureau of the Ad Hoc Working Group of the Whole of guidelines to assist the first round of workshops of the second cycle of the Regular Process finalized by the Group of Experts in consultation with the Bureau of the Ad Hoc Working Group of the Whole and the secretariat of the Regular Process, and attached as annex III to the present report;

(s) Welcome the holding of the workshops in support of the Regular Process in Lisbon in September 2017, in Auckland, New Zealand, in October 2017, in Camboriú, Brazil, in November 2017, in Bangkok in November 2017, and in Zanzibar, United Republic of Tanzania, in December 2017;

(t) Take note of the elements for discussion on the shape and structure of the assessment (or assessments) to be carried out in the second cycle of the Regular Process prepared by the Group of Experts, in accordance with the programme of work, and decide that in the drafting of an outline, the Group of Experts should proceed on the basis of the preparation of a single comprehensive assessment;

(u) Recall the crucial importance of the Regular Process for ongoing ocean-related intergovernmental processes and its possible inputs, including:

(i) The 2030 Agenda for Sustainable Development;

(ii) The development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;

(iii) The United Nations Framework Convention on Climate Change;

(iv) The United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea as outlined in the programme of work for the period 2017-2020 for the second cycle of the Regular Process.

(v) Recall the importance of ensuring that assessments, such as those included in the *Global Sustainable Development Report* and those prepared under the Intergovernmental Panel on Climate Change, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services and the Regular Process, support one another and avoid unnecessary duplication, and also recall the importance of compatibility and synergies between such assessments and assessments at the regional level;

(w) Request intergovernmental and non-governmental organizations to provide information on recent and ongoing assessments and other processes at the regional and global levels relevant to the Regular Process in order for the secretariat to update the inventory of recent and ongoing assessments and other processes at the regional and global levels which are relevant to the Regular Process;

(x) Take note of the guidance for contributors — part I, prepared by the Group of Experts pursuant to paragraph 310 of resolution 71/257 and attached as annex IV to the present report;

(y) Take note with appreciation of the work undertaken thus far by the secretariat in compiling a capacity-building inventory of needs and opportunities relevant for the Regular Process, in accordance with the programme of work, based on information contributed by relevant United Nations system organizations, bodies, funds and programmes and by relevant intergovernmental organizations;

(z) Invite States and non-governmental organizations, as well as intergovernmental organizations that have not already done so, to provide relevant information for inclusion in the capacity-building inventory of needs and opportunities relevant for the Regular Process which is being compiled and maintained by the secretariat;

(aa) Recall its invitation in paragraph 313 of resolution 71/257 to the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, the United Nations Environment Programme, the International Maritime Organization, the Food and Agriculture Organization of the United Nations, the World Meteorological Organization and relevant United Nations system organizations, bodies, funds and programmes, as appropriate, to assist in the implementation of the second cycle of the Regular Process with regard to the following activities: awareness-raising, the identification of experts for the Pool of Experts, technical and scientific support for the Bureau and the Group of Experts, the hosting of workshops and meetings of the writing teams, capacity-building and the scoping process for the assessment;

(bb) Welcome the adoption, by the twenty-ninth Assembly of the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, of Decision IOC-XXIX/8.2, in particular regarding the provision of technical and scientific support to the second cycle of the Regular Process in accordance with the guidance of the Ad Hoc Working Group of the Whole;

(cc) Recall its invitation in paragraph 314 of resolution 71/257 to relevant intergovernmental organizations to contribute, as appropriate, to the activities of the second cycle;

(dd) Urge States, international financial institutions, donor agencies, intergovernmental organizations, non-governmental organizations and natural and

juridical persons to make financial contributions to the voluntary trust fund and to make other contributions to the Regular Process;

(ee) Request the Secretary-General to convene, in 2018, two meetings of the Ad Hoc Working Group of the Whole of no more than four days total duration: one in the first half of 2018 to approve the outline of the assessment and another in the second half of 2018, with a view to providing recommendations to the General Assembly at its seventy-third session on the preparation of the assessment to be carried out in the second cycle and on the implementation of the second cycle, and encourage the widest possible attendance of participants in the Ad Hoc Working Group of the Whole.

Annex I

Mechanism for the establishment of the Pool of Experts for the second cycle of the Regular Process

1. Pursuant to paragraph 311 of General Assembly resolution 71/257 on oceans and the law of the sea, the Bureau of the Ad Hoc Working Group of the Whole on the Regular Process has been requested to develop a mechanism to establish a Pool of Experts for the second cycle of the Regular Process, including by inviting individuals who served in the Pool of Experts during the first cycle of the Regular Process to indicate to the secretariat of the Regular Process whether they would be interested in serving in the Pool of Experts for the second cycle.

2. Further to this, in the same resolution, the General Assembly invited States to designate, by 31 May 2017, national focal points to facilitate the implementation of the programme of work for the period 2017-2020 for the second cycle of the Regular Process, in particular with respect to the nomination process for additional experts to the Pool of Experts; swift communication between the scientific community, the Group of Experts, the Pool of Experts, the Bureau and the secretariat of the Regular Process; and awareness-raising (para. 312).

3. Additionally, the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Environment Programme (UNEP), the International Maritime Organization (IMO), the Food and Agriculture Organization of the United Nations (FAO), the World Meteorological Organization (WMO) and relevant United Nations system organizations, bodies, funds and programmes, as appropriate, were invited to assist in the implementation of the second cycle of the Regular Process with regard to, inter alia, the identification of experts for the Pool of Experts (para. 313). Relevant intergovernmental organizations were also invited to contribute, as appropriate, to the activities of the second cycle (para. 314).

4. It is noted that, in the relevant paragraphs of General Assembly resolution 71/257 referred to above, the terms "nomination" and "identification" are used. In principle, in accordance with previous practice during the first cycle of the Regular Process, it is understood that nominations effectively constitute appointments, which are then confirmed by the secretariat through a notification letter to the experts informing them of their appointment to the Pool of Experts.

5. In this regard, the appointment process for the Pool of Experts is outlined in a two-phase sequence as follows:

Step A: Experts are drawn from the Pool of Experts for the first cycle (para. 311)

1. Verification of contact information for members of the Pool of Experts for the first cycle

The secretariat communicates with members of the Pool of Experts from the first cycle of the Regular Process to confirm their contact information, including with assistance from the Joint Coordinators of the Group of Experts and Permanent Missions to the United Nations, as required.

Invitation to individuals who served in the Pool of Experts during the first cycle of the Regular Process to indicate to the secretariat of the Regular Process whether they would be interested in serving in the Pool of Experts for the second cycle (para. 311).

2. The secretariat communicates with members of the Pool of Experts from the first cycle of the Regular Process inviting them to confirm their interest in

serving in the Pool of Experts for the second cycle and compiles this list for subsequent inclusion in a database, together with up-to-date information regarding the experts, the database on the Pool of Experts. As these members have already been appointed by Member States, they can be added to the Pool of Experts for the second cycle upon confirmation of interest.

Step B: Appointments of additional experts to the Pool of Experts for the second cycle (paras. 311, 312, 313 and 314)

3. Designation of national focal points by 31 May 2017 (para. 312)

The Bureau of the Ad Hoc Working Group of the Whole finalizes and approves the terms of reference for the national focal points. The secretariat sends invitations to Member States to designate national focal points. The secretariat compiles a list of the nominated national focal points for subsequent inclusion in a database, separate from the database on the Pool of Experts. A list of national focal points will also be made available to the Bureau.

4. Invitations for appointments of additional experts to the Pool of Experts for the second cycle (paras. 312, 313 and 314)

There will be two methods for appointing new experts to the Pool of Experts for the second cycle. It is anticipated that the majority of new appointments will come directly from States. By States, it is understood that appointments could come from, for example, the national focal points or permanent missions to the United Nations in New York. After the secretariat sends invitations to States to appoint experts to the Pool of Experts, States will send such appointments, via note verbale, to the secretariat, which will add the individuals to the database on the Pool of Experts. Appointments must include the contact information of the experts, and should also include curriculum vitae.

In addition to the procedure described above, a complementary procedure will be available, pursuant to paragraphs 313 and 314 of resolution 71/257, in which the General Assembly invites the Intergovernmental Oceanographic Commission of UNESCO, UNEP, IMO, FAO and WMO and relevant United Nations system organizations, bodies, funds and programmes, as appropriate, to assist in the implementation of the second cycle of the Regular Process with regard to, *inter alia*, the identification of experts for the Pool of Experts, and also invites relevant intergovernmental organizations to contribute, as appropriate, to the activities of the second cycle.

The complementary procedure aims to allow for the appointment of relevant experts who may not have occasion to be appointed by States, for example those experts who may be professionally active outside of their State of nationality.

In this regard, relevant intergovernmental organizations will be invited to provide recommendations on experts with relevant professional expertise to the Bureau through the secretariat. The Bureau will transmit, through the secretariat, the names of the experts recommended by relevant intergovernmental organizations, to the respective States of the experts' nationalities for appointment. The proposed procedure will operate on a system of express or implied consent, or, as the case may be, objections may be expressed as follows:

(a) Should the State concerned agree, the experts can be appointed by the State by note verbale and will be added to the Pool of Experts (express consent);

(b) If the State, after agreement, chooses not to send a note verbale within one month from the date of the Bureau's initial transmittal concerning the recommended expert(s), the Bureau appoints the experts to the Pool of Experts on behalf of the State (implied consent);

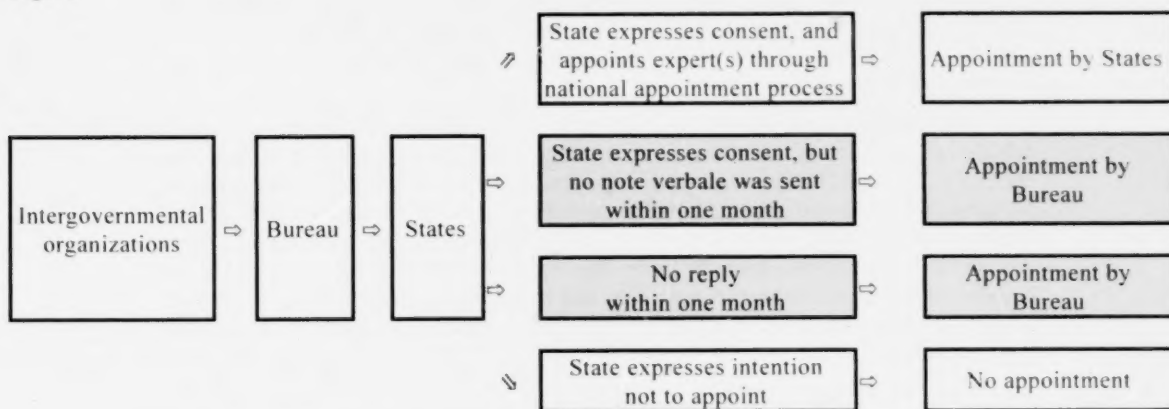
(c) Should the State remain silent, after a one-month period from the date of the Bureau's initial transmittal concerning the recommended expert(s), the Bureau appoints the expert(s) to the Pool of Experts on behalf of the State;

(d) Should the State concerned object to the appointment, the expert(s) will not be added to the Pool of Experts (express objection).

It should be noted that the Bureau acts only in accordance with the respective Member States' explicit or implicit intention to appoint recommended experts.

The figure is included for illustrative purposes.

Figure



The scope of the relevant intergovernmental organizations to be invited to contribute to the appointment process of the additional experts to the Pool of Experts for the second cycle will be determined by the Bureau.

Annex II

Terms of reference for national focal points

Scope and objectives

1. Within the framework of the programme of work for the period 2017-2020 of the second cycle of the Regular Process, endorsed by the General Assembly in its resolution 71/257 of 23 December 2016 on oceans and the law of the sea (paragraph 299), States are invited to designate, by 31 May 2017, national focal points to facilitate the implementation of the programme of work for the period 2017-2020 for the second cycle of the Regular Process, in particular with respect to the nomination process for additional experts to the Pool of Experts, swift communication between the scientific community, the Group of Experts, the Pool of Experts, the Bureau and the secretariat of the Regular Process and awareness-raising (see resolution 71/257, para. 312).
2. In this regard, the national focal points would facilitate the nomination of experts to the Pool of Experts, strengthen and promote coordination and the exchange and dissemination of information with the national scientific community of a State and with other stakeholders, including in order to share ongoing and planned activities at the national level and to share experiences, best practices, tools and methodologies and lessons learned in ocean-related matters relevant to the Regular Process.
3. The national focal points will also be an important interlocutor in awareness-raising and capacity-building activities envisaged under the programme of work for the period 2017-2020, including with regard to regional workshops. These regional workshops will serve to, inter alia, raise awareness, provide information and receive feedback on the First Global Integrated Marine Assessment (the first World Ocean Assessment), generate interest from the scientific community, contribute to capacity-building and inform the scoping and preparation phases and the collection of regional-level information and data for the preparation of the assessment(s) of the second cycle.

Criteria

4. Given the importance of establishing a clear, single focal point for communication with each State taking part in the Regular Process, the National Focal Point should work in an appropriate national authority or institution or in the relevant permanent mission in New York. In making their nominations to the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs, which serves as the secretariat of the Regular Process, States may wish to consider professionals working in any of the main disciplines in the social, economic and environmental sciences, in particular those with experience of the science-policy interface in ocean/marine affairs, and with due regard to the need for gender balance.

Mandate

5. The national focal points will:
 - (a) Facilitate and expedite the process of the nomination of experts to the Pool of Experts and ensure transparency and efficacy by requesting all relevant

national scientific entities to nominate suitably qualified experts to contribute to the preparation of the assessment(s);

(b) Facilitate a more effective nomination process for experts at the national level in order to avoid delays in appointing experts to the pool and to ensure their continued engagement in the process;

(c) Liaise and collaborate as appropriate with the extensive network of national focal points of the Intergovernmental Oceanographic Commission of UNESCO to, inter alia, mobilize the national scientific community to assist with the nomination of experts to the pool;

(d) Ensure that contact details for themselves and the experts nominated by their State to the Pool of Experts are kept up-to-date on the databases maintained by the secretariat of the Regular Process;

(e) Facilitate the speedy dissemination within their States of reports, background information and exchange of information on matters relevant to the Regular Process;

(f) Assist with identification of participants for regional workshops and the organization of such workshops as required;

(g) Raise awareness about the first World Ocean Assessment and future assessment(s);

(h) Contribute to the identification of and provide information on capacity-building needs and/or opportunities;

(i) Exchange information on national initiatives, including on recent and ongoing assessments and other processes relevant to the Regular Process;

(j) Ensure swift communication between the national scientific community, the Group of Experts, the Pool of Experts, the Bureau and the secretariat on matters relevant to the Regular Process;

(k) Respond to requests from the Group of Experts, the Bureau and the secretariat of the Regular Process.

Modalities of work

6. Focal point

The secretariat for the Regular Process (the Division for Ocean Affairs and the Law of the Sea), will be the focal point for national focal points, and in that capacity will:

(a) Communicate with the Permanent Missions regarding the nomination process for the Pool of Experts, with copies to national focal points;

(b) Liaise with national focal points, share information on developments related to the outputs of the Regular Process, collect information from national focal points relevant to the nomination of experts for the Pool of Experts and to the preparation of assessment(s) and update the Group of Experts, Co-Chairs and the Bureau of the Ad Hoc Working Group of the Whole on the information received;

(c) Convene regular information-sharing web meetings and/or prepare periodic communications to update national focal points on progress in the preparation of the assessment(s);

(d) Keep the Joint Coordinators of the Group of Experts of the Regular Process informed of significant exchanges with national focal points.

Meetings

(a) The secretariat for the Regular Process will hold regular virtual meetings as needed with national focal points, including, as appropriate, in conjunction with the Bureau and/or the Group of Experts, and will endeavour to make maximum use of electronic communication and information management and conduct intersessional work by electronic means such as Skype and WebEx.

(b) Communications between national focal points, the secretariat of the Regular Process and the Group of Experts should be transmitted through a database that they will be able to access electronically through the website of the Regular Process.

Annex III

Guidelines for the first round of workshops in 2017 to assist the second cycle of the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects

I. Purpose and objectives

1. The programme of work for the period 2017-2020 for the second cycle of the Regular Process, developed by the Ad Hoc Working Group of the Whole¹ and endorsed by the General Assembly,² includes in the activities for 2017 the holding of regional workshops, which are to begin in the second half of 2017, to build capacity, support the development of assessment(s) and facilitate outreach and awareness-raising.³ These guidelines apply only to the first round of regional workshops and are intended to give guidance to the arrangements for such workshops.

2. The objectives of each of these workshops should therefore be to:

(a) Provide an opportunity to present the main conclusions of the First Global Integrated Marine Assessment (first World Ocean Assessment);

(b) Enable participants to put forward their views on the scope and structure that should be adopted for the assessment or assessments to be prepared in the second cycle of the Regular Process, which is/are to be completed by the end of 2020. Given that the General Assembly decided that the first cycle of the Regular Process should focus on establishing a baseline, and that subsequent cycles should extend to establishing trends,⁴ the workshops should in particular aim to conclude:

(i) What aspects of the ocean are most relevant to include in the assessment(s) to be made in the second cycle, and the extent to which it is possible to establish trends in relation to them;

(ii) How the establishment of such trends can most effectively be done in the different oceanic regions in a standard manner;

(iii) How the existence of trends can in future be evaluated;

(iv) How risks in relation to the various aspects of the ocean can be evaluated, taking into account regional interests and differences;

(v) What regional priorities should be addressed in the preparation of the assessment(s) of the second cycle, bearing in mind the global ocean policy agenda;

(c) Promote capacity-building within the region for which each workshop is held, so as to assist in creating the abilities to contribute from the region to the production of the assessment(s). In particular, the workshops should consider what steps might be taken to improve abilities to carry out integrated assessments within the region;

¹ See the attachment to A/71/362.

² See General Assembly resolution 71/257, para. 299.

³ See paragraph 8 (h) of the Programme of Work 2017-2020, attachment to A/71/362.

⁴ See General Assembly resolution 65/37 A, para. 201, reaffirming the principles guiding the Regular Process and the objectives and scope of its first cycle in A/64/347, annexes.

(d) Explore what increased cooperation or coordination between processes already under way in the region could assist in providing the information required for the assessment(s);

(e) Consider how assessments produced by the Regular Process can be structured so as to help policymakers most effectively with their tasks;

(f) Consider how to improve arrangements for networking between the experts and organizations taking part in each workshop, and the Co-Chairs of the Ad Hoc Working Group of the Whole, the Bureau of the Ad Hoc Working Group of the Whole, the Group of Experts, the Pool of Experts, the national focal points and the secretariat of the Regular Process.

3. This list of objectives and the outline agenda in the Appendix will constitute the terms of reference of the workshops. In addition to the first World Ocean Assessment and, in particular, the summary approved by the General Assembly,⁵ the workshops should also take account of:

(a) The abstract of views on lessons learned from the first cycle of the Regular Process, prepared by the secretariat of the Regular Process and presented to the seventh meeting of the Ad Hoc Working Group of the Whole, held from 3 to 9 August 2016;

(b) The outputs of the high-level United Nations Conference to Support the Implementation of Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development (Ocean Conference, 5-9 June 2017), as well as the views expressed on the role of the Regular Process in relation to the 2030 Agenda for Sustainable Development, and links to the agreed indicators for that Agenda;

(c) Information on developments in relation to other relevant United Nations processes, such as

(i) The work under General Assembly resolution 69/292: Development of an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;

(ii) The United Nations Framework Convention on Climate Change;

(iii) The United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea;

(d) Information to be provided by the participants in the workshop on ongoing and planned assessments at the regional and national levels that will be relevant to the assessment(s) to be produced during the second cycle of the Regular Process. Such information should preferably be provided in written form in advance of the workshop;

(e) Material provided by the Group of Experts of the Regular Process and/or the Ad Hoc Working Group of the Whole on a possible framework for the assessment(s) of the second cycle of the Regular Process.

⁵ World Ocean Assessment I. Available from www.un.org/depts/los/global_reporting/WOA_RegProcess.htm. The summary, approved by the General Assembly in paragraph 266 of resolution 70/235, is contained in document A/70/112.

II. Number and locations

4. States, relevant organizations, bodies, funds or programmes within the United Nations system and intergovernmental regional organizations are invited to offer to host workshops for the following:

- (a) The North Pacific;
- (b) The South Pacific;
- (c) The Indian Ocean, the Arabian Sea, the Red Sea and Gulf of Aden and the Regional Organization for the Protection of the Marine Environment/Agreement for the Establishment of the Regional Commission for Fisheries area;⁶
- (d) The North Atlantic, the Baltic Sea, the Mediterranean Sea and the Black Sea;
- (e) The South Atlantic (between the African and American coasts) and the wider Caribbean.

5. Separate workshops will not be held for the Arctic Ocean or the Southern Ocean. Instead, the relevant international bodies and forums for those areas (in particular, the Antarctic Treaty System and the Arctic Council) will be invited to consider, and to contribute to, their views on the issues proposed for the workshops as they affect these regions. If requested, members of the Group of Experts and Pool of Experts will make themselves available for consultation.

III. Timing

6. The intention is that the five workshops should be held before the end of 2017.

IV. Activities of workshops

7. The agenda of a workshop to support the Regular Process should, as far as possible, include the elements set out in the appendix to the present guidelines. The activities of a workshop should take full account of the principles for the Regular Process recommended by the Ad Hoc Working Group of the Whole and endorsed by the United Nations General Assembly in 2009 and reaffirmed by the United Nations General Assembly in 2016⁷ and the various recommendations of the Ad Hoc Working Group of the Whole.

8. An important part of each workshop will be making a start on capacity-building for conducting integrated assessments, so that the workshop participants can better understand and contribute to the work of the Regular Process.

V. Hosts

9. Workshops are to be hosted by Member States, members of United Nations specialized agencies and relevant organizations, bodies, funds or programmes within the United Nations system. They are to be organized under the auspices of

⁶ Members of the Regional Organization for the Protection of the Marine Environment: Bahrain, Iran (Islamic Republic of), Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. Members of the Regional Commission for Fisheries: Bahrain, Iran (Islamic Republic of), Iraq, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

⁷ See A/64/347, annex; and General Assembly resolution 71/257, para. 285.

the United Nations,⁸ in coordination with the secretariat of the Regular Process and with the assistance of members of the Group of Experts and Pool of Experts, as appropriate. For the organization of such workshops, as they affect these regions, hosts may request the cooperation of relevant regional intergovernmental organizations and/or that of relevant national scientific institutions.

VI. Participation

10. Member States of the United Nations, members of United Nations specialized agencies and relevant organizations, bodies, funds or programmes within the United Nations system shall be entitled to participate in any workshop that they consider relevant to them, up to the number of available places. Relevant regional intergovernmental organizations in the region are encouraged to participate, including regional seas organizations, regional fisheries management organizations and arrangements, relevant regional intergovernmental marine science organizations and intergovernmental organizations and arrangements undertaking work in relation to large marine ecosystems. For practical reasons, the logistics and the number of invitees will need to be managed by the host in consultation with the secretariat of the Regular Process, as well as in consultation with the Bureau, as appropriate. Member States should consider arranging for their national focal points for the Regular Process to assist with identification of participants for regional workshops and the organization of such workshops as required and, where possible, to participate in relevant workshops.

11. The following may request invitations to participate: non-governmental organizations in consultative status with the Economic and Social Council or with Convention secretariats, relevant non-governmental organizations accredited to the United Nations Conference on Sustainable Development or participating in the United Nations Oceans Conference in accordance with General Assembly resolution 70/303: Modalities for the United Nations Conference to Support the Implementation of Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development, relevant scientific institutions and organizations representing major groups as defined in Agenda 21: Programme of Action for Sustainable Development. In particular, relevant regional marine science institutions and organizations and relevant regional arrangements undertaking work in relation to large marine ecosystems are encouraged to participate. Such institutions, organizations and arrangements should be active in ocean affairs and marine science and their participation should help advance the work and objectives of the Regular Process. Hosts may reserve a number of places in the workshop to be filled by such invitees.

12. Each workshop should include at least one member of the Group of Experts, one member of the Pool of Experts, as appropriate, and one member of the secretariat of the Regular Process, to be coordinated with the secretariat of the Regular Process. The Joint Coordinators of the Group of Experts will be invited to participate in all the workshops. If possible, all members of the Group of Experts from States in the area covered by the workshop should participate. Members of the Group of Experts from outside that area may also be invited to participate by the secretariat of the Regular Process. The participation of the members of the Group of Experts and of the Pool of Experts, as appropriate, from developing countries from the region and the Joint Coordinator from the developing country will be supported within the provision made in the regular budget of the United Nations for 2017.

⁸ Such workshops will require the conclusion of a host conference agreement, where necessary.

13. Hosts may, as appropriate, encourage the participation of relevant members of the Pool of Experts, including their attendance in the regional workshops, and seek their input on organization, networking and substantive input to the scoping process, preparation and review of the outcome of the workshops.

VII. Chair and secretariat

14. Hosts should designate a chair (or co-chairs) of the workshop, who will be expected to take responsibility for summarizing the outcomes of the workshop with the aid of the workshop support staff and members of the Group of Experts. Hosts may consider inviting a member of the Group of Experts and, as appropriate, of the Pool of Experts, to be the chair, or co-chair, of the workshop. Hosts may provide guidance, where needed, on what the priorities for the region are, as well as on potential participants and other modalities for the workshops.

15. Hosts should provide support staff to organize proceedings in consultation with the secretariat of the Regular Process and the members of the Group of Experts and, as appropriate, of the Pool of Experts, who are taking part, and to help the chair(s) the member(s) of the Group of Experts and the secretariat to provide a summary of the outcome.

VIII. Output of workshops

16. The output of the workshop should take the form of a summary of the discussions prepared by the chair or co-chairs, with the help of the member(s) of the Group of Experts, of the Pool of Experts, as appropriate, and the secretariat of the Regular Process. Provision should be made for the participants to comment on a draft of the summary and for the final version to be revised by the chair or co-chairs and representative(s) of the Group of Experts and of the Pool of Experts, as appropriate, in the light of such comments. Where a State or intergovernmental organization not participating in the workshop conducted was responsible for assessments, institutions, networks or other arrangements which have been identified as relevant, that State or intergovernmental organization should be invited and/or requested to review and comment on what is said about any such matter.

17. The secretariat of the Regular Process will play an important role in ensuring that the output of each workshop is captured and presented in a way which will support the work of the second cycle of the Regular Process.

18. Those functions would include capturing the relevant information presented (directly and indirectly) during the workshops. Such information may include comments on the first cycle of the Regular Process and the content of the First Global Integrated Marine Assessment (World Ocean Assessment I), relevant scientific processes, institutions and experts at regional and/or national level; and regional/national informational needs with respect to the Regular Process and its outputs (including through national focal points). The secretariat may also assist in identifying (together with the Joint Coordinators and hosts) the learning points/needs and resources which may be relevant to the database and the capacity-building partnership event and multi-stakeholder dialogue to be held in late 2017. Information relevant to the scoping process will also be captured in collaboration with the Joint Coordinators and members of the Group of Experts and of the Pool of Experts, as appropriate.

19. The secretariat would also assist in the preparation of the output of the workshops and would also be responsible for the development and adaptation of the outreach materials relevant to the Regular Process and its outputs.

20. The division of work in preparing the written output of each workshop should be agreed between the host and the secretariat of the Regular Process, in consultation with the member(s) of the Group of Experts and of the Pool of Experts, as appropriate.

IX. Follow-up to the workshops

21. The final version of the output of the workshops should be made publicly available on the Regular Process website.

22. The secretariat of the Regular Process should ensure that liaison continues after the workshop with bodies that have contributed to it and with national focal points in the region. In particular, the secretariat should seek to facilitate follow-up on capacity-building possibilities identified by the workshop with respect both to the further clarification of needs and to the identification of best practices.

23. As a follow-up to the workshops, the secretariat would also continue to liaise with the relevant participants (see paras. 10-13 above), following consultation with the Bureau, as well as with any other intergovernmental organizations or non-governmental organizations identified during the workshops, to ensure clear and open lines of communication and flow of information, including with respect to the establishment of and interaction with the Pool of Experts.

24. The databases maintained by the secretariat will also be updated according to the information collected during the workshops, including through follow-up with the relevant participants (see paras. 10-13 above) and intergovernmental organizations or non-governmental organizations.

Appendix

Elements for the agenda of a workshop to support the Regular Process

1. Presentation by a representative of the Group of Experts of the Regular Process or the secretariat of the Regular Process of the First Global Integrated Marine Assessment (first World Ocean Assessment), and discussion of the strengths and weaknesses of the Assessment.
2. Presentation by a representative of the secretariat of the Regular Process on current developments in global ocean policies.
3. Consideration by the workshop of the possible structure of the assessment or assessments to be prepared under the Regular Process in the second cycle, running until the end of 2020.
4. Consideration of the regional priorities for the assessment(s) will be in the second cycle. This should include consideration of how such assessment(s) could best help policymakers in the region with their tasks, including the implementation of the 2030 Agenda for Sustainable Development.
5. Review of assessments that have been carried out in the region since 2012 and that are proposed to be carried out in the region in the period 2017-2020, in order to identify how the assessment(s) under the Regular Process can best build on them.
6. Consideration of steps that might be taken within the region in the period 2017-2020 to support contributions to the assessment(s) under the Regular Process in the second cycle. This should include consideration of:
 - (a) Increased cooperation or coordination between processes already under way in the region that could assist in providing the information required for such assessment(s);
 - (b) What can be done in relation to issues on which relevant data and/or information is known to be available for the region or parts of it, but where it has not been fed into any assessment;
 - (c) What can be done to provide data and/or information by 2020 on issues relevant to the region, where data and/or information is currently lacking;
 - (d) How to improve arrangements for networking between experts and organizations taking part in each workshop, the Group of Experts and the secretariat of the Regular Process.
7. Consideration of capacity-building in the region relevant to the Regular Process, including:
 - (a) Capacity-building that might be undertaken in the period 2017-2020 to support the ability of States to undertake assessments and to contribute to and make use of the outputs of the Regular Process;
 - (b) The gaps that exist in longer-term capacity-building in the region to support future assessments, at either the global or the regional level. Consideration of this question should start from the general identification of capacity-building gaps in the first World Ocean Assessment;
 - (c) Information and material relevant to the database on capacity-building needs and opportunities and to the capacity-building partnership event and multi-stakeholder dialogue to be held in late 2017, as well as the identification of

best practices and the role of the workshops and participants therein in awareness-raising and outreach.

8. Harmonization of workshop agendas: the Bureau of the Ad Hoc Working Group of the Whole on the Regular Process should have the opportunity to provide guidance on the draft agenda of each workshop.

Annex IV

Guidance for contributors Part I

A. Introduction

1. The present document sets out working arrangements and guidance for those contributing to the second cycle of the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects (the "Regular Process").
2. The outputs of the second cycle will be the product of cooperation among a large number of experts in many different fields in various different roles. The major challenge is to show how the state of the world ocean is changing, as compared with the state as described in the First Global Integrated Marine Assessment (first World Ocean Assessment), bringing together environmental, economic and social aspects.
3. The guidance is intended for:
 - (a) Members of the Group of Experts of the Regular Process, established pursuant to General Assembly resolution 65/37 A and renewed under General Assembly resolution 70/235;¹
 - (b) Members of the Pool of Experts appointed to assist the Group of Experts of the Regular Process, pursuant to paragraph 311 of General Assembly resolution 71/257;
 - (c) Peer reviewers who are invited to review material under arrangements approved by the Bureau of the Ad Hoc Group of the Whole.
4. Members of these groups are referred to collectively as contributors.

B. Status of contributors

5. When contributing to the Regular Process, contributors are expected to act in their personal capacity as independent experts, and not as representatives of any Government or any other authority or organization. They should neither seek nor accept instructions from outside the Regular Process regarding their work on the Regular Process, although they are free to consult widely with other experts and with government officials, in order to ensure that their contributions are credible, legitimate and relevant. Contributors are also expected to disclose to the secretariat of the Regular Process any conflicts of interest, or the possibility of any perception of a conflict of interest, both before they accept their appointment and after appointment, when any potential conflict may arise and to confirm this commitment in a response to the secretariat of the Regular Process.
6. The input of contributors is fundamental to the success of the Regular Process, and will be fully acknowledged in the text. Accordingly, the names of the members of the writing team for each chapter will be shown prominently at the head of each chapter. Each chapter will be capable of being cited separately. Appropriate acknowledgements will likewise be made for the work of commentators and peer reviewers.

¹ General Assembly resolution 64/71, para. 177, endorsing A/64/347, annex; Assembly resolution 65/37 A, paras. 200-203, and Assembly resolutions 70/235, para. 264 and 71/257, para. 285.

C. Structure of the Regular Process

7. The Regular Process is an intergovernmental process, accountable to the General Assembly and guided by international law, including the United Nations Convention on the Law of the Sea and other applicable international instruments.

8. The Regular Process is overseen and guided by an Ad Hoc Working Group of the Whole of the General Assembly (the "Ad Hoc Working Group of the Whole"), including representatives of all Member States of the United Nations, and chaired by two Co-Chairs (one from a developing country and one from a developed country) appointed by the President of the General Assembly. Between sessions of the Ad Hoc Working Group of the Whole, a Bureau of the Ad Hoc Working Group of the Whole ("the Bureau") ensures the implementation of the decisions of the Ad Hoc Working Group of the Whole. The Bureau consists of the Co-Chairs of the Ad Hoc Working Group of the Whole and 15 Member States — 3 appointed by each of the five regional groups in the General Assembly (Africa, Asia and the Pacific, Eastern Europe, Latin America and the Caribbean and Western Europe and Other).

9. The framework of the Regular Process was established by the General Assembly in its resolutions 64/71 and 65/37 A and reaffirmed by the General Assembly in its resolutions 70/235 and 71/257. It consists of:

- (a) The overall objective;
- (b) A description of its scope;
- (c) A set of principles to guide its establishment and operation;
- (d) Best practices identified by the Group of Experts.

10. These can be found on the website of the Regular Process.² Capacity-building is essential for the implementation, and is an integral part, of the Regular Process at all stages of its implementation. Without detracting from the other principles which the General Assembly has endorsed, the allocation of tasks to members of the Pool of Experts must reflect the principle of adherence to equitable geographical representation in all activities of the Regular Process, and have due regard to a desirable balance between the genders.

11. A Group of Experts has been established with the general task of carrying out assessments under the Regular Process. It consists of up to 25 experts — up to 5 appointed by each of the five regional groups of the General Assembly.

12. A Pool of Experts to assist the Group of Experts is constituted under the Mechanism for the establishment of the Pool of Experts for the second cycle of the Regular Process, developed by the Bureau in accordance with paragraph 311 of resolution 71/257.

13. The Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs, Secretariat of the United Nations, has been designated as the secretariat of the Regular Process. The United Nations Environment Programme, the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, the Food and Agriculture Organization and the International Maritime Organization, and other competent specialized agencies of the United Nations, as appropriate, have been asked to provide scientific and technical support.

² Part of the website of the Division for Ocean Affairs and the Law of the Sea. See www.un.org/Depts/los/global_reporting.

D. Tasks to be undertaken and who will carry them out

1. General outline of work to produce the outputs of the second cycle of the Regular Process

14. The framework for the tasks to deliver the outputs of the second cycle of the Regular Process is established by the terms of reference and methods of work for the Group of Experts endorsed by the Ad Hoc Working Group of the Whole on 18 April 2017 and subsequently taken note of by the General Assembly.³ Within this framework, this guidance provides more detail on how the tasks will be achieved. Contributors to its production will have six main tasks:

(a) Establishing the scope and structure of the assessment(s) to be produced in the second cycle of the Regular Process, together with a timetable and implementation plan;

(b) Writing the draft chapters of the assessment(s);

(c) Producing a complete draft of the assessment(s);

(d) Carrying out a review, by independent peer reviewers, of the draft assessment(s);

(e) Submitting the draft, revised in the light of the peer review, to the Member States of the United Nations for review and comment;

(f) Finalizing the text of the assessment(s).

15. When the Group of Experts has finalized the text of an assessment, it will be submitted, with the approval of the Bureau, for consideration to the Ad Hoc Working Group of the Whole and for final approval by the General Assembly. A note showing the comments received from States and the way in which they have been treated will also be submitted to the Bureau.

2. Tasks of the Group of Experts

16. The Group of Experts will be responsible collectively for:

(a) Developing, in cooperation with the secretariat of the Regular Process, proposals for the scope and structure of the assessment(s) to be produced during the second cycle, together with a proposed timetable and implementation plan for each. These proposals will be submitted through the Bureau to the Ad Hoc Working Group of the Whole for its consideration and recommended by it to the General Assembly for its approval;

(b) Selecting, subject to the approval of the Bureau, the lead member from within the Group of Experts, the convenor of the writing team and (in consultation with the convenor) the members of the writing team for each of the various chapters within the agreed scope and structure of the assessment(s). The convenors and members of the writing teams will be drawn from the Group of Experts and/or the Pool of Experts. Where appropriate for a chapter, the Group of Experts will also, subject to the approval of the Bureau, invite members of the Pool of Experts to act as panels of commentators to comment on initial draft chapters;

(c) Ensuring that the writing teams and commentators have adequate qualifications and represent an equitable geographic and gender distribution. Additionally, the Group of Experts will ensure adequate representation of experts from relevant disciplines, especially socioeconomics;

³ General Assembly resolution 71/257, para. 299, endorsing A/71/362.

- (d) Reviewing the draft chapters produced by the writing teams;
- (e) Agreeing the draft text of the assessment(s);
- (f) Proposing arrangements for peer review of each of the draft chapters to the Bureau and ensuring, in collaboration with the writing teams and in consultation with the secretariat, the revision of the text(s) in the light of the peer reviewers' comments;
- (g) Agreeing a complete text of each of the assessment(s) and submitting it, through the secretariat of the Regular Process, to States for comment;
- (h) In the light of comments from States, revising and finalizing the text of the assessment(s) and preparing a note for the Bureau of how the comments from States have been dealt with.

3. Tasks for lead members

17. In order to ensure that there is a person clearly identifiable as responsible for ensuring that the preparation of each chapter follows the present guidance and otherwise achieves the necessary high standards, the Group of Experts will designate one of its members as the lead member for each chapter in the assessment(s) undertaken in the second cycle of the Regular Process (except those summarizing parts of the assessment(s), where parallel arrangements are set forth in paragraph 24). Other members may also be designated as co-lead members. Members of the Group of Experts may also be designated to take the lead on groups of chapters, in order to ensure that they are properly coordinated. The designation of lead members will be subject to the approval of the Bureau. The lead member will have overall responsibility, with any co-lead members, under the supervision of the Group of Experts as a whole, for the progress of the chapter.

18. Where the lead member is not an expert in the field covered by the chapter, a separate convenor of the writing team will be designated. This may also be done where the Group of Experts considers that a member of the Pool of Experts is particularly well qualified to act as convenor of the writing team.

19. The lead member for each chapter, in particular, will:

- (a) Propose to the Group of Experts, for its agreement and submission to the Bureau, a writing team for each chapter. The membership of the proposed team will be worked out by the lead member and (where it is proposed that the lead member will not be the convenor) the proposed convenor of the writing team and the lead member. The designations of the writing teams will be subject to the approval of the Bureau;
- (b) Propose to the Group of Experts (in collaboration with the convenor of the writing team if the lead member is not also the convenor) whether there should be a panel of commentators for the chapter and the membership of such a panel;
- (c) Review the draft chapter produced by the writing team, the comments from any panel of commentators (where a panel of commentators has been designated (see paras. 25 to 30) and the way in which those comments are proposed to be reflected by the writing team, in order to ensure that the data and information used is the best available and that interpretations and conclusions are sound and well supported;
- (d) Present the draft chapter developed by the writing team to the Group of Experts for agreement for it to go forward to the next stage;
- (e) Present to the Group of Experts, with the help of the convenor of the writing team (if a separate convenor of the writing team is appointed), for its

agreement and submission to the Bureau, a list of experts to serve as peer reviewers for the assessment(s) in respect of their draft chapters for approval by the Bureau;

(f) Ensure that the writing team has addressed comments from peer reviewers on the chapter and has made appropriate adjustments to the text and that explanations are recorded of how each comment has been reflected in the final version;

(g) Liaise with the writing team on how comments from States are to be dealt with;

(h) Present the revised draft of the chapter to the Group of Experts and assist in finalizing the complete draft and editing the text of each of the assessment(s).

20. The purpose of the collaboration of the lead member, co-lead member(s) and the convenor of the writing team (where a separate convenor is appointed) is to ensure the integration, consistency and quality of the various chapters of the assessment(s), and to make sure that the present guidance is followed. It is not to "second-guess" the writing team.

21. In order to help deliver the collective responsibilities of the Group of Experts in cases where the lead member is also designated as convenor of the writing team for a chapter, the Group of Experts will designate another of its members to review the material for that chapter produced and to act jointly with the lead member in the tasks at 19 (e), (f) and (g).

4. Tasks for writing teams and their convenors

22. A separate convenor of the writing team will be designated for each chapter where no member of the Group of Experts has relevant expertise, or where a member of the Pool of Experts appears to be particularly well qualified for this work. Initially, proposed convenors of the writing team will be identified by the Group of Experts, applying the principles for the Regular Process approved by the General Assembly. When suitable members for the team have been identified, the Group of Experts will submit the names for approval by the Bureau.

23. The convenor of the writing team for a chapter (whether the convenor is also the lead member or not) will have general responsibility for writing the chapter. In particular, the convenor of the writing team will:

(a) Identify other candidate members of the writing team and (where appropriate) commentators for the chapter (in collaboration with the lead member (if separate));

(b) Agree on the division of work in preparing, and revising, the draft chapter with other members of the writing team for the chapter, and ensure that the team as a whole delivers them in accordance with the timetable and implementation plan;

(c) Ensure that the draft chapter reflects the scope and structure of the assessment and the guidance to contributors, that they are based on the best available data and information and that the conclusions in them are sound and well supported;

(d) Where a panel of commentators (see paras. 26-28 below) is designated, ensure that comments from the commentators are considered by the writing team, that appropriate adjustments are made to the drafts in the light of those comments and that explanations are recorded of the response made to each comment in the manner described in paragraph 36 below;

(e) Prepare, in collaboration with the lead member (if separate), the draft chapter for submission to the Group of Experts for agreement for it to go forward to the next stage;

(f) Help the lead member (if separate) to provide a list of experts to be proposed as peer reviewers for approval by the Bureau and to address the comments of peer reviewers and of the Member States, enlisting the help of other members of the writing team where appropriate and ensuring that explanations are recorded of how each comment has been reflected in the final version.

24. All members of the writing team for each chapter are expected to take an interest in the overall balance of the draft chapter and to ensure that, as far as they are able, the chapter is based on the best available data and information and that conclusions in them are sound and well supported. If one or more members of a writing team for a chapter do not agree with the version of that chapter finally approved by the Group of Experts as part of the finalized assessment, they are entitled to have a footnote inserted recording briefly their disagreement and the reasons for it.

25. For the chapters summarizing the various parts of the assessment(s), the Joint Coordinators of the Group of Experts will arrange, in collaboration with the lead members and the convenors of the writing teams for those chapters, for the production of the initial drafts, on the basis of the draft chapters as reviewed by the Group of Experts. Where appropriate, the Joint Coordinators will also take such initiatives as seem needed to enable other tasks to be completed effectively and in accordance with the timetable.

5. Commentators and reviewing tasks

26. Where a panel of commentators is designated for any chapter, the draft chapter will be reviewed by that panel, and appropriate adjustments made by the writing team in the light of the panel's comments, before finalization of the draft of that chapter for review by the peer reviewers and Member States.

27. Commentators are expected to help the writing team by:

- (a) Where appropriate, contributing additional information and/or data;
- (b) Reviewing the draft chapter from the point of view of overall balance;
- (c) Considering both whether the best available data and information has been used, and whether the conclusions are sound and well supported.

28. Commentators are expected to record their comments in the manner described in paragraph 41 below and to submit them in good time in accordance with the timetable set by the Group of Experts and approved by the General Assembly. Writing teams are expected to address each comment and indicate in a document for publication on the website of the Regular Process how they have responded to each comment from the commentators.

29. Peer reviewers, acting in a totally independent capacity as experts, are likewise expected to review the relevant chapter from the point of view of overall balance and to consider both whether the best available data and information has been used, and whether the conclusions are sound and well supported. They also are expected to record their comments in the manner described in paragraph 41 below and to submit them in good time in accordance with the timetable.

30. Writing teams are expected to address each comment from the peer reviewers and amend the draft chapter accordingly. They should prepare documents showing

their responses to the comments of peer reviewers which will be considered by the Group of Experts in finalizing the draft assessment.

31. After the review of the draft assessment by States, the Group of Experts will likewise address each comment made by Member States and revise and finalize the assessment. They will also prepare documents showing their responses to those comments, to be submitted to the Bureau.

E. Ethics in authoring and evaluating material for the Regular Process

32. It is expected that contributors will follow established protocols for ethics in scientific reporting. In particular, contributors are responsible for:

- (a) Correctly citing the published work of others and clearly stating the source of information;
- (b) Accurately representing the conclusions of cited work;
- (c) Disclosing any conflict of interest;
- (d) Reflecting diverse research outcomes, if any.

33. By its very nature, the Regular Process requires contributors to review and synthesize numerous large bodies of work, and to distil out the salient points of numerous studies into consolidated statements. Throughout this process, it is important that the synthesis produced does not lose or misrepresent the essential conclusions, meaning and intent of the original works. Contributors are responsible for ensuring that such misrepresentation does not occur.

34. The nature of the Regular Process demands that contributors pay special attention to issues of independence and bias to maintain the integrity of, and public confidence in, the results.

F. Style and modalities

35. The assessment(s) produced in the second cycle of the Regular Process are intended to be read by policymakers and the general public and must be written in a manner that will enable broad understanding. This requirement implies that technical terms not in common use in general writing should be explained on their first appearance and that abbreviations and acronyms should likewise first appear with the full form. Attention must also be paid to the requirement that the assessment(s) are to be policy relevant and not policy prescriptive.

36. Since English is the working language of the Group of Experts, those invited to contribute text to draft chapters will be asked to do so in a form capable of use by the Group of Experts.

37. The United Nations Secretariat works in MSWord 2013 for documents. Documents should, therefore, be submitted in this file format as far as possible.

38. Since much material will be read on screen, references should be given in brief in the text, rather than in footnotes. In-text references should be in brackets and consist of the author's name (or first author's followed by "et al.") and the year of publication. A complete list of works referred to should be included at the end of the text of each chapter. If there is more than one publication by that author in the same year, the different publications should be differentiated by A, B, C, etc., after the year number. The list of references should be in the alphabetical order of the in-text references and give full details of the material to which reference is made. The style

of such lists should follow that of the reference lists in the First Global Integrated Marine Assessment (World Ocean Assessment I).

39. It will assist the production of the assessment(s) if the following writing approaches are followed (which are aligned with those of the United Nations Secretariat):

(a) Paragraphs should be numbered in Arabic numerals in a single sequence from the start of a text to the end;

(b) Paragraphs should not contain more than two levels of indentations. The higher level of indentation should be identified by small roman letters in brackets ((a), (b), (c) etc.). The lower level should be identified by small roman numerals in brackets ((i), (ii), (iii), (iv), etc.);

(c) Headings of sections and subsections should be aligned with the left margin;

(d) Subparagraphs should commence with a capital (majuscule) letter.

40. For more detailed guidance, the United Nations on-line Editorial Manual can be consulted at <http://dd.dgacm.org/editorialmanual/>.

41. Commentators and peer reviewers should record their comments in a spreadsheet which will be supplied by the secretariat of the Regular Process which will enable the response of the writing team or the Group of Experts to be shown alongside the comments made.



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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion and protection of human rights and fundamental freedoms while countering terrorism

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur of the Human Rights Council on the promotion and protection of human rights and fundamental freedoms while countering terrorism Fionnuala Ni Aoláin, submitted in accordance with Assembly resolution 70/148 and Human Rights Council resolution 31/3.

* The present report was submitted after the deadline since the newly appointed Special Rapporteur took office on 1 August 2017.



Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Summary

The present report is the first annual report submitted to the General Assembly by the newly appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. A brief introduction (sect. I) is followed by a description of the activities of the former and current Special Rapporteurs (sects. II and III). The Special Rapporteur shares several initial thoughts reflecting her priorities and interpretation of the mandate and how she intends to discharge it (sect. IV) and highlights conclusions and recommendations (sect. V). She identifies four substantive areas of interest falling within the mandate: the proliferation of permanent states of emergency and the normalization of exceptional national security powers within ordinary legal systems; the need for greater clarity in respect of the legal relationships between national security regimes and international legal regimes (human rights, international humanitarian law and international criminal law) as well as the relationship of human rights to the emergence of stand-alone international security regimes regulating terrorism and counter-terrorism; the advancement of greater normative attention focused on the gendered dimensions of terrorism and counter-terrorism; and the advancement of the rights and the protection of civil society in the fight against terrorism. In the first instance, the Special Rapporteur will focus particular attention on those issues and will integrate them into the tools available to her in the discharge of her mandate, specifically in future country visits and cooperation with Governments and all pertinent actors, including relevant United Nations bodies.

I. Introduction

1. The present report is the first report submitted to the General Assembly by the newly appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Assembly resolution 70/148 and Human Rights Council resolution 31/3. The report provides several initial thoughts of the Special Rapporteur regarding her interpretation of the mandate and how she intends to discharge it.

2. On 10 July 2017, Fionnuala Ni Aoláin was appointed Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism by the Human Rights Council at its thirty-fifth session; on 1 August 2017, she took office.

3. A report on the work of former Special Rapporteur, Ben Emmerson, undertaken since the submission of his last report to the Human Rights Council (sect. II), is followed by a description of the activities of the Special Rapporteur (sect. III). In section IV, the Special Rapporteur presents a preliminary discussion of her areas of interest in respect of the discharge of her mandate. In section V, she provides conclusions and recommendations.

II. Activities of the former Special Rapporteur

4. The activities of the former Special Rapporteur since the issuance of his final report to the General Assembly (A/71/384) are set forth in his final report to the Human Rights Council (A/HRC/34/61).

5. In addition to the activities described in the report, the former Special Rapporteur undertook three country visits: to Tunisia, from 30 January to 3 February 2017; to Saudi Arabia, from 30 April to 4 May 2017; and to Sri Lanka from 10 to 14 July 2017. He expresses his appreciation to all his interlocutors and officials for the cooperation they extended to him during the visits. Additional official country visits are currently being scheduled. Updated information about the former Special Rapporteur's visits and related requests is available on the website of the Office of the United Nations High Commissioner for Human Rights (www.ohchr.org).

III. Activities of the current Special Rapporteur

6. On 28 July 2017, the Special Rapporteur attended an expert consultation convened by the United Nations Office of Counter-Terrorism in the Palais Wilson, in Geneva. The consultation addressed the issue of ensuring human rights compliance of advance passenger information legislation. The Special Rapporteur provided technical advice on an internal guidance document circulated in advance of the meeting to ensure the compliance of the use, transfer and retention of advance passenger information with international human rights standards. The consultation was also attended by the former mandate holder and the Special Rapporteur on the right to privacy.

7. The Special Rapporteur has identified the countries that she wishes to visit during the course of her mandate and has issued requests to 26 States. Pursuant to paragraph 33 of Human Rights Council resolution 35/34, in her letters, the Special Rapporteur asked the Governments to give serious consideration to responding favourably to those requests. The following countries were addressed: Australia, Belgium, Bangladesh, Bosnia and Herzegovina, China, Colombia, Egypt, France, Honduras, Indonesia, India, Jordan, Kazakhstan, Malaysia, Mali, Mexico, Nigeria,

Pakistan, the Philippines, Qatar, the Russian Federation, Tajikistan, Turkey, the United Arab Emirates, the United States of America and Yemen. At the time of completion of the present report, Mexico, the United States, the United Arab Emirates, the Russian Federation, the Philippines, Indonesia and Malaysia responded by acknowledging receipt of the letter and informing the Special Rapporteur that the request for invitation was under consideration by their respective Governments. Belgium, France, Australia, Kazakhstan, Bosnia and Herzegovina, Tajikistan and Qatar responded favourably. The response from Bangladesh, China, Colombia, Egypt, Honduras, India, Jordan, Mali, Nigeria, Pakistan, Turkey and Yemen is still being awaited.

8. The Special Rapporteur undertook a private (previously arranged) visit to the military commission complex at Guantanamo Bay, Cuba, from 19 to 26 August 2017 in her professional capacity as an academic commentator for Irish media and to advance ongoing research related to her academic work. Given her longstanding interest and expertise in military commissions and criminal process to try persons charged with crimes of terrorism, she was pleased to have the opportunity to observe the 26th pretrial hearing in the joined cases of several Guantanamo Bay detainees.

IV. Preliminary outline areas of interest to the Special Rapporteur

9. The Special Rapporteur pays tribute to the work of her predecessor, Mr. Emmerson. She will build upon his commitment to promote human rights and the rights of victims of terrorism, and to ensure protection against human rights violations while countering terrorism and preventing violent extremism.

10. The Special Rapporteur would like to highlight key areas of interest and concern as she takes up her mandate. She views these areas as interrelated and co-dependent. They include (a) the normalization of exceptional national security powers within ordinary legal systems; (b) greater clarity in respect of relevant legal relationships, specifically as between national security norms and systems and international legal norms and systems (human rights, humanitarian law and international criminal law); (c) greater clarity and transparency on the totality and cohesiveness of normative development related to counter-terrorism norms and practices within the United Nations architecture; (d) integration and prioritization of normative attention to the gendered dimensions of terrorism and counter-terrorism in every aspect of the mandate; and (e) advancement of the rights and protection of civil society and civil space in order to protect that integral component of society if targeted in the guise of the fight against terrorism. For these purposes, the Special Rapporteur will continue the mandate engagement in country visits and cooperation, offering her expertise to Governments and all relevant actors, including relevant United Nations bodies, specialized agencies and programmes, non-governmental organizations and other regional and sub-regional international institutions, as well as victims of terrorism and their families and victims of counter-terrorism.

A. Normalization of national security powers within ordinary legal systems

11. The Special Rapporteur emphasizes that during the period of her tenure, she will focus particular attention on the relationship between the use of exceptional national security and emergency powers and their subsequent permanent absorption into national law and administrative practice. She will give close attention to situations of de facto emergency, complex emergency and permanent emergency.

which are premised on the use of national security and counter-terrorism legislation and administrative process under the domestic law of States.

12. The Special Rapporteur is concerned about the absorption of normally exceptional national security powers and counter-terrorism measures in the ordinary law of many States. In this context, the dividing line between the exercise of exceptional national security powers and the ordinary criminal and civil processes of some States becomes hard to distinguish and the protection of rights becomes increasingly fraught and difficult to provide. Challenges include temporal expansions of national security legislation and counter-terrorism measures beyond the time frame that was used to legally justify their initial invocation and application. In such circumstances, the emergence of permanent states of emergency are seen, where ordinary legal regulation recedes and may be sidelined by the deployment of expansive executive powers, extensions of criminal law to new categories of crime, the primacy of military, security and intelligence institutions over police power within States and sustained limitations on a broad range of rights from assembly to association. All of these institutional practices pose significant challenges to the effective protection of human rights. Moreover, extended use of national security powers can, in particular, negatively affect the enjoyment of rights by vulnerable and minority groups.

13. International human rights law and practice has long recognized, *inter alia*, that in exceptional situations of war or emergency, States may derogate from certain rights. Human rights treaties also recognize the legitimate exercise of limitations on rights, including to protect public safety. However, derogations from rights are intended to be the exception, not the norm, as indicated by decades of human rights jurisprudence and by the views of States expressed on the function and requirements of derogation.¹

14. Limitations on rights are not open-ended and are not absolute; they must always be legitimate, proportionate and necessary and must never impair the essence of the right. Human rights treaties require States to remain cognizant of their legal obligation to return to regular legal order within a legally defined period of time. In general, and consistent with the position of the United Nations Human Rights Committee, as articulated in its general comment No. 29,² the Special Rapporteur reaffirms that if the same end can be achieved by regular legislation or administrative procedure, as opposed to exceptional legal norms, States should not resort to exceptional national security powers and derogate unnecessarily from the protection of rights and freedoms; rather, they should defer to the capacity of the ordinary legal system to address the challenges at hand. Public posturing and the hasty adoption of new legislation or administrative measures to give the impression of protecting public safety should not be undertaken at the expense of the enjoyment of human rights.

¹ See, for example, European Court of Human Rights, *Lawless v. Ireland*, No. 3, judgment of 1 July 1961, application No. 332/57; see A/36/40, annex VII; see also "The Siracusa Principles on the Limitations and Derogation Provisions in the International Covenant on Civil and Political Rights", *Human Rights Quarterly*, vol. 7, No. 1, (reprinted in February 1985); see also Inter-American Court of Human Rights, OEA/Ser.L/V/II.116. The Special Rapporteur also notes that the practice of derogation by States from their human rights treaty obligations also seems to be in abeyance. Increasingly, the use of ordinary legislation to advance national security powers and practice as well as an apparent unwillingness to invoke the derogation provision of human rights treaties has meant fewer derogations in practice despite extensive use of emergency and national provision powers by States post-9/11.

² See Human Rights Committee, general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, art. 4, para. 1, which states, "The restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant".

15. Temporary arrangements have a peculiar tendency to become entrenched over time and thus normalized and made routine. Time-bound emergency legislation is often the subject of future extensions and renewals. The Special Rapporteur notes her concern about the practices whereby legislative or administrative acts that had originally been enacted as temporary emergency or counter-terrorism measures have subsequently been transformed into permanent legislation. On the basis of evidence in practice,³ the Special Rapporteur recalls that the longer national security legislation — broadly understood — remains on the statute books, the greater the likelihood that extraordinary powers made available to Government under such legislation will become part of the ordinary, normal legal system. The corresponding effect on the enjoyment of human rights is considerable and weakens the capacity of States to maintain effective human rights-compliant anti-terrorism initiatives. The dangers of such pitfalls have been identified by the Global Counter-Terrorism Strategy, which clearly places human rights at the centre of the fight against terrorism and emphasizes that measures taken to counter terrorism must comply with international human rights law (see General Assembly resolution 60/288, annex). Although developed and adopted by States, unfortunately, the Global Counter-Terrorism Strategy remains largely ignored. Emergency regimes should not be normalized unless they are necessary and proportional to the threat faced.

16. The Special Rapporteur underscores the fact that governmental conduct during a crisis creates a precedent for future exigencies as well as for "normalcy". There is a grave danger that where national security powers are piled up, essentially in a constant state of ratcheting powers upwards, Government will take as its starting point the experience of extraordinary powers and authority granted and exercised during previous emergencies rather than judging the needs that arise from new challenges in light of a sober assessment of the capacity of ordinary legal process to cope. Much like the need to gradually increase the dosage of a heavily used medication in order to experience the same level of relief, so too with respect to national security powers: the perception may be that new, more radical powers are needed every time to fight impending crises. In turn, new extraordinary counter-terrorism measures confer an added degree of *ex post* legitimacy and respectability, as well as a sense of normality, to previously used, less drastic emergency measures. What were deemed exceptional emergency actions in the past may come to be regarded as normal, routine and ordinary in light of more recent and more dramatic counter-terrorism powers. In this context, it also proves highly challenging to adhere in practice to the insights of the Global Counter-Terrorism Strategy, namely, that respect for all human rights for all and the rule of law is the basis of the fight against terrorism and essential to all components of the Strategy (*ibid.*, sect. IV). It is also important to demonstrate in a persuasive manner that the results achieved in terms of public safety by the exceptional or emergency measures taken, at the expense of the erosion of fundamental rights and freedoms, could not have been achieved otherwise (i.e., by implementing existing legislation).

17. The Special Rapporteur will also focus particular attention on the use of emergency and counter-terrorism legislation for purposes other than those for which it was originally promulgated. The "getting used to" phenomenon for long-term counter-terrorism measures may also have a tranquilizing effect on the public's critical approach towards emergency regimes. There are prescient challenges to maintaining a healthy and critical discourse in any society on the need for and use of counter-terrorism measures and corresponding scepticism directed at those who

³ See U.C.N.4 Sub.2/1982/15; see also Subrata Roy Chowdhury, *Rule of Law in a State of Emergency: The Paris Minimum Standards of Human Rights Norms in a State of Emergency*, vol. 4 (London, Pinter Publishers, 1989).

raise concerns about the normalization of exceptional powers with marked effects on the vitality and capacity of civil society.

18. While recognizing the real and undulating pressures faced by States as a result of terrorist acts and by terrorist organizations, the Special Rapporteur affirms the primacy of respecting universal human rights norms in fighting terrorism and in addressing the conditions conducive to terrorism. The protection of human rights is essential to any sustained global strategy to prevent, protect and manage terrorism. Although the pressures brought to bear on States to provide security are real, long-term and sustained security will only be achieved when human rights have a central role in all aspects of the global fight against terrorism.

B. Clarity on the interplay of legal regimes in the counter-terrorism sphere

19. The expansion of institutional and legal counter-terrorism frameworks, policies and practices following the events of 9/11 has been formidable. The normative developments were driven in part by the need to fill exposed lacunae in global counter-terrorism regulation. The United Nations Counter-Terrorism Committee was established by the Security Council in its resolution 1373 (2001) and bolstered by the Council in its resolution 1624 (2005). Noting the obvious, the implementation capacity of the Committee was enabled by the Counter-Terrorism Committee Executive Directorate.

20. In sequence, the Counter-Terrorism Implementation Task Force was established by the Secretary-General in 2005 and endorsed by the General Assembly through the aforementioned United Nations Global Counter-Terrorism Strategy, adopted by State consensus in 2006.⁴ The Task Force organized its important work through working groups and a counter-terrorism-related project. Most recently, the Office of Counter-Terrorism of the Secretariat was established by the Assembly in its resolution 71/291 of 15 June 2017 (see also A/71/858). All of these bodies engage a myriad of indispensable regulatory roles.

21. In parallel, the Special Rapporteur underscores that over the past 16 years, a sizable norm creation function has consolidated from the parallel activities of those multiple bodies. The United Nations architecture has sought to respond to an ever-transforming terrorism landscape with sufficient regulatory capacity to address new challenges and threats. However, observers might concur that the pace of response has often outpaced the capacity for full consideration of the overall effects of sustained norm production on the protection and promotion of human rights. Equally, the pace of norm creation in the counter-terrorism sphere creates real challenges relating to norm fragmentation and ineffectiveness.

22. The scale of norm creation is, in the view of the Special Rapporteur, underappreciated. More particularly, the Special Rapporteur voices her concern that insufficient attention has been focused on the specific and global compliance of wide-ranging counter-terrorism regulation across multiple and new spheres with human rights standards in the same period. The production of new counter-terrorism standards, rules and practices through Security Council and General Assembly resolutions, guidance to States, task forces and technical assistance has created a

⁴ In the plan of action contained in the annex to the Strategy, Member States resolved to take specific measures to combat terrorism, namely, (a) to address the conditions conducive to the spread of terrorism; (b) to prevent and combat terrorism; (c) to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard; and (d) to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

sizable body of new norms that can be described as an international counter-terrorism regime, one whose full relationship to and interaction with other bodies of legal norms, specifically international human rights and international humanitarian law, is underexplored and is in need of mapping and due consideration for implementation.

23. In parallel with expanded norm development within the United Nations, regional regulatory bodies have not stood still. By way of example, in 2005 the Council of Europe enacted the Convention on the Prevention of Terrorism, complemented by the Guidelines on Human Rights and the Fight Against Terrorism, adopted by the Council's Committee of Ministers. The European Union enacted Directive 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism.⁵ Other regional systems have also substantively engaged in counter-terrorism norm production.⁶ In short, an explosion of legal norms at various levels of legal capacity have been established since 2001 at the global, regional,⁷ national and subnational levels that address counter-terrorism, countering violent extremism and, more recently, preventing violent extremism.

24. The Special Rapporteur affirms the need for a better understanding of the relationship and intersections between these bodies of legal and administrative norms. Mapping intersecting and overlapping legal regimes in the counter-terrorism sphere is not an abstract exercise; rather, it is necessary to understand the full scope of a State's legal obligations and commitments in the counter-terrorism arena, identifying overlap, contradiction and inefficiencies.

25. However, more importantly for the Special Rapporteur is the need to thoroughly map the full terrain of counter-terrorism regulation so as to better engage and understand the full scope of a State's human rights obligations. In this universe of expanding norms, human rights protections run real risks of being marginalized or drowned out by the plethora of new international rules, regulations and obligations. Moreover, there is a lack of clarity concerning the precise legal relationships between different bodies of legal rules, including the application of *lex specialis*, the differentiation between derogable and non-derogable rights in the application of these norms and whether any consideration has been given to existent State human rights obligations in the construction of these norms.

26. The Special Rapporteur also notes her concern about the lack of clarity, in complex situations of internal armed conflict, low-intensity conflict and post-conflict settings, regarding the scope and application of human rights norms in the context of countering terrorism. While affirming that her role is uniquely focused on the protection of human rights in the context of counter-terrorism, the Special Rapporteur recognizes that situations of conflict constitute particular normative challenges to the application of human rights, especially where States advance new

⁵ The Directive replaces Council Framework Decision 2002/475/JHA (*Official Journal of the European Communities*, No. L 164, June 2002) and amends Council Decision 2005/671/JHA ("Directive") (*ibid.*, No. L 253, September 2005). It was adopted in response to increased instances of terror attacks in the territories of the member States. Council Framework Decision 2002/475/JHA previously served as the primary legislation on the counter-terrorism initiatives of the European Union. The Directive calls upon member States to criminalize certain acts that may be considered terrorist offenses if committed with the requisite intent and defines offenses related to terrorist activities. In addition, it reviews support mechanisms in place to assist victims of terrorism.

⁶ By way of example, the Inter-American Convention against Terrorism, adopted on 2 June 2002, AG/RES. 1840 (XXXII-O/02); the Organization of African Unity Convention on the Prevention and Combating of Terrorism, adopted on 14 July 1999, came into effect on 6 December 2002, and a further Protocol was adopted by the third ordinary session of the African Union in July 2004.

⁷ For example, the Southern African Development Community developed a regional counter-terrorism strategy, which was approved by the Community at its thirty-fifth summit, held in August 2015.

interpretation or extensions in the application of international humanitarian law. The Special Rapporteur voices her concern that the complexity of the interface between newly developing counter-terrorism regimes allied with extended interpretation of international humanitarian law may in practice thwart the application of fundamental human rights treaty obligations. This is an area of State practice to which the Special Rapporteur will give close attention.

C. Mainstreaming gender in the discharge of the mandate

27. The Special Rapporteur is deeply committed to fully integrating a sustained and meaningful gender analysis in all aspects of her mandate. Terrorism typically does not discriminate between women and men. The victims of terrorism and those who are harmed by terrorist acts or counter-terrorism policies and practices are equally gendered.

28. Nonetheless, until relatively recently, women have been broadly invisible in terrorism and counter-terrorism discourses. The adoption by the Security Council of its resolution 2242 (2015) has provided some remedy to that imbalance. The resolution explicitly highlights the role of women in countering violent extremism and addresses the impact of the rise of extremism on the lives of women and, more broadly, on women's security, mobility, education, economic activity and opportunities.⁸ More broadly, the women, peace and security agenda has sought to highlight the role and significance of conflict and security challenges to women and has been broadly welcomed by States as an important intervention in the peace and security context.

29. However, it remains the case that when women come into view in terrorism and counter-terrorism policy, they typically do so as the wives, daughters, sisters and mothers of terrorist actors, or as the archetypal victims of senseless terrorist acts whose effects on the most vulnerable (women) underscore the unacceptability of terrorist targeting. Women have been marginal to the conversations in which definitions of security are agreed and generally peripheral to the institutional settings in which security frameworks are implemented as policy and law. Women perpetrators of terrorist violence have been largely ignored, although acts of terrorist violence perpetrated by women are increasingly visible, including women as suicide bombers and women exercising leadership roles in terrorist organizations.⁹ It is also critical to note that definitions of terror remain highly gendered, with

⁸ See Security Council resolution 2242 (2015), paras. 11, 12, 13 and 15. Specifically, in para. 13, the Council highlights the opportunities to engage women. It urges Member States and the United Nations system to ensure the participation and leadership of women and women's organizations in developing strategies to counter terrorism and violent extremism which can be conducive to terrorism, including through countering incitement to commit terrorist acts, creating counter narratives and other appropriate interventions, and building their capacity to do so effectively, and further to address, including by the empowerment of women, youth, religious and cultural leaders, the conditions conducive to the spread of terrorism and violent extremism which can be conducive to terrorism, consistent with the United Nations Global Counter-Terrorism Strategy.

⁹ For example, regarding Boko Haram's use of female suicide bombers, see: Jason Warner and Hilary Matfess, "Exploding stereotypes: the unexpected operational and demographic characteristics of Boko Haram's suicide bombers" (Combating Terrorism Centre at West Point, 2017). According to the authors, from 11 April 2011 to 30 June 2017, Boko Haram deployed 434 bombers to 247 different targets during 238 suicide-bombing attacks. At least 56 per cent of the bombers were women, and at least 81 bombers were specifically identified as children or teenagers. In terms of global numbers, recent academic studies (see, for example, Jessica Davis, "Evolution of the global jihad: female suicide bombers in Iraq, *Studies in Conflict & Terrorism*, vol. 36, No. 4 (2013)) indicate that in the 256 records of attacks conducted by women from 1968 to 2012, 157 involved suicide attacks with detonation.

deliberate acts of sexual violence perpetrated by terrorist organizations as a method and means of terrorism going unrecognized under domestic legislation. This means in practice that those victims of terrorism are ignored, stigmatized, marginalized and excluded from the redress and support recognized as vital for victims of terrorism.¹⁰

30. While the Security Council, in resolution 2242 (2015), requested the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate to integrate gender as a cross-cutting issue throughout the activities within their mandate,¹¹ the integration of women into national security planning, priority and execution remains highly patchy at the national and international levels. However, those exclusions are already being addressed, including by the Secretary-General's Plan of Action to Prevent Violent Extremism, which tackles the importance of gender, in particular in the context of violent extremism, including women in counter-terrorism activities, building women's civil society capacity so that they can act as barriers to violent extremism and setting aside funds to empower women as a place holder for broader economic, social and political reforms in marginal communities that are at risk of producing terrorists.¹² Noting that sustained lack of integration, the Special Rapporteur will consistently address such matters during the course of her mandate, including during country visits.

31. However, the focus on women is only one aspect of integrating a gender perspective into the work of the mandate holder. In addition to greater integration of women's capacity and experience into the substantive work of counter-terrorism, a sustained focus on men is needed to ensure full engagement with the gender dimensions of terrorism and counter-terrorism. Concentration on male actors has dominated national security conversations and as a result the "causes" of terrorism are often coded male with little reflection on the gendered contexts, practices and intersections that give profound insight into the conditions that produce and sustain terrorism. For example, there is increasing awareness, in the context of countering violent extremism, that recruitment to terrorist organizations is premised on ideas of male identity and power, including unfettered access to women based on institutionalized gender inequality and women's subordination. In order to prevent violent extremism effectively there is no avoiding the masculinity tropes that attract men on the basis of a certain form of male identity and power.

32. The Special Rapporteur notes that men, maleness and masculinities as a category of analysis is missing in the ways terrorist acts, terrorist organizations and anti-terrorism responses are understood. In order to fully integrate a gender

¹⁰ The Security Council has expressly condemned the use of sexual violence, early and forced marriage, rape, sexual slavery and the increased use of girls as suicide bombers by organizations such as Boko Haram. See, for example, Security Council resolution 2349 (2017). See also, S/2017/249.

¹¹ Specifically, in para. 11, the Security Council calls for the greater integration by Member States and the United Nations of their agendas on women, peace and security, counter-terrorism and countering violent extremism which can be conducive to terrorism, requests the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate to integrate gender as a cross-cutting issue throughout the activities within their respective mandates, including within country-specific assessments and reports, recommendations made to Member States, facilitating technical assistance to Member States, and briefings to the Council, encourages the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate to hold further consultations with women and women's organizations to help inform their work, and further encourages the Counter-Terrorism Implementation Task Force to take the same approach in activities within its mandate".

¹² Noting the contrast between earlier work, see, for example, Counter-Terrorism Implementation Task Force, "First report of the Working Group on Radicalization and Extremism that Lead to Terrorism: inventory of State programmes" (2006), which did not directly address women and girls, and more recent efforts by the Counter-Terrorism Implementation Task Force inter-agency working groups, which include UN-Women and gender expertise.

perspective into the work of the mandate, attention to gender identity, practice and the gender order of terrorism and counter-terrorism will be a necessary part of the work of the Special Rapporteur. In this regard, the attention of the Special Rapporteur will be focused on the good practice already under way within the United Nations architecture, advancing a more holistic understanding of the importance of gender in the areas of countering and preventing violent extremism, with emphasis on why and how certain kinds of masculinity strongly correlate with radicalization and the capacity for violent mobilization, and how best to address such understandings in programming and thinking about the prevention of terrorism.

D. Protecting and promoting civic space and civil society while countering terrorism

33. Building on the work of her predecessor, the Special Rapporteur underscores the value of a healthy, diverse and well-resourced civil society in any country, in particular in countries facing the threat and reality of terrorism. As the General Assembly noted in the United Nations Global Counter-Terrorism Strategy, effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing. In advancing the promotion and protection of human rights in any society, civil society is a necessary and much needed infrastructure. It can pave the way for more effective prevention strategies, with regard to both the temptation to resort to terrorist action and the attraction of radical or violent extremism. The Special Rapporteur affirms the value of civic space, public participation and critical engagement by civil society as an essential part of a human rights-informed approach to counter-terrorism. The value of the rights to association, assembly and expression is a key element of the human rights treaty architecture. Those rights have intrinsic value and promote the functionality of societies in which the dignity and equality of every human being is advanced. The Special Rapporteur notes her attentiveness to undue restrictions on civil society in the name of security and counter-terrorism. She will remain deeply engaged with both Governments and civil society in the discharge of her mandate.

V. Conclusions

34. In concluding the present preliminary first report, the Special Rapporteur recognizes that her mandate starts at a highly significant time, with the instigation of urgent institutional reform and the initiatives of the Secretary-General to engage comprehensive reform of the Organization's counter-terrorism strategy and architecture.

35. As the previous mandate holder noted in his final report, the mandate of the Special Rapporteur is the only one within the United Nations that is explicitly and exclusively dedicated to the protection and promotion of human rights while countering terrorism. The Commission on Human Rights established the mandate in its resolution 2005/80. It was then assumed by the Human Rights Council and was extended in 2016 by Council resolution 31/3 for a further three years. Given the breadth of the mandate and the responsibility under it to consider all human rights that might be affected by counter-terrorism measures, its sources and capacity are relatively meagre in institutional terms. The limitations of the mandate's institutional capacity have been set out in detail by her predecessor and the Special Rapporteur will not revisit them here. However, the adoption, mainstreaming and resourcing of an integrated human rights infrastructure in countering terrorism is an urgent priority in the restructuring endeavour. In conclusion, the Special Rapporteur

underscores the fact that she looks forward to the work ahead and, in particular, to sustained engagement in the institutional revisions that follow from a shared commitment to enhance the capacity of the United Nations to advance human rights as an integral component of collective and individual security.



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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Right to education*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the right to education, Koumbou Boly Barry, submitted in accordance with Human Rights Council resolutions 8/4 and 26/17. In her report, the Special Rapporteur focuses on the role of equity and inclusion in the right to education.

* The present report was submitted after the deadline in order to reflect the most recent developments.



Report of the Special Rapporteur on the right to education

Summary

In the present report, the Special Rapporteur reviews the role of equity and inclusion in strengthening the right to education, in particular in the context of achieving the Sustainable Development Goals. The Special Rapporteur concludes by calling for States to take significant, positive actions to tackle discrimination, inequity and exclusion in education to ensure that the Sustainable Development Goals are met.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolutions 8/4 and 35/2. In the report, devoted to inclusion and equity and the right to education, the Special Rapporteur addresses the importance of equity and inclusion in education and considers how those concepts apply in practice.

2. Significant improvements have been made in the education sector, in particular in education enrolment rates, in the past 15 years, under the guidance set out in the Millennium Development Goals. United Nations Educational, Scientific and Cultural Organization (UNESCO) statistics show that adjusted net enrolment rates were 91 per cent for primary education, 84 per cent for lower-secondary education and 63 per cent for upper-secondary education in 2014, yet those statistics obscure the fact that some students continue to be excluded (see E/2017/66). A total of 263 million children and young people remain out of school, including 61 million children of primary school age. Sub-Saharan Africa and Southern Asia account for over 70 per cent of the global population that is out of school at the primary and secondary levels of education.¹

3. Children from the richest 20 per cent of households were better readers upon completion of their primary and lower-secondary education than children from the poorest 20 per cent of households. In most countries for which data is available, urban children scored higher in reading than rural children.² In addition to poor and rural children, girls, persons with disabilities, minority groups, indigenous peoples, and nomadic populations are often overrepresented among eligible learners who are not in school. In the next 15 years under the Sustainable Development Goals, it is vital that Governments look at those groups to find ways to ensure that the right to education is enjoyed equally by all.

4. In the present report, the Special Rapporteur highlights the need to focus on eliminating discrimination and promoting equity and inclusion to identify and address the barriers in bringing the right to education to the world's remaining eligible learners who are not in school.

II. Activities undertaken by the Special Rapporteur during the reporting period

5. During the reporting period, the Special Rapporteur presented her thematic report on realizing the right to education through non-formal education (A/HRC/35/24) to the Human Rights Council at its thirty-fifth session. In the report, she examined how non-formal education can be a flexible, cost-effective mechanism that can provide high-quality education which fulfils State obligations to provide for the right education.

6. The Special Rapporteur participated in a number of public events on education and continued collaborating with States, international organizations and non-governmental organizations.

7. From 5 to 7 September 2016, the Special Rapporteur attended the East Africa regional consultations on the human rights guiding principles on State obligations

¹ UNESCO, "Leaving no one behind: how far on the way to universal primary and secondary education?", Policy Paper No. 27 and Fact Sheet No. 37 (July 2016). Available from unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-all/single-view/news/263-million-children-and-youth-are-out-of-school-from-primary.
² Ibid.

regarding private schools, organized by the Education Support Program of the Open Society Foundations; the Global Initiative for Economic, Social and Cultural Rights; and the Right to Education Project. Participants engaged with representatives of States, civil society groups and human rights organizations and experts on developing guiding principles for State support to private schools.

8. On 18 October, the Special Rapporteur participated in a panel discussion on human rights and the Sustainable Development Goals, held at the Nordic Trust Fund of the World Bank, in Washington, D.C. At the event, World Bank staff consulted with the Special Rapporteur on the role of the right to education in development.

9. On November 11, the Special Rapporteur participated in the international seminar entitled "Towards an emancipatory education promoter of human rights", held in Mexico City, hosted by the Latin American Campaign for the Right to Education. The seminar addressed the role of human rights and the promotion of the right to education in Latin America.

10. From 16 to 18 November, the Special Rapporteur attended the inaugural international seminar of the Lusophone Network on the right to education, held in Porto, Portugal, hosted by the Brazilian National Campaign for the Right to Education, the UNESCO office in Brazil and the Open Society Foundations. The seminar addressed issues relating to the right to education in Portuguese-speaking countries.

11. From 17 to 19 January 2017, the Special Rapporteur attended the international symposium on the theme "School violence and bullying: from evidence to action", held in Seoul and organized jointly by UNESCO and the Institute of School Violence Prevention of Ewha Womans University. The symposium aimed at promoting evidence-based action among education policymakers in order to provide safe and non-violent learning environments.

12. On 13 and 14 March, the Special Rapporteur attended the Europe and North America regional consultations on the human rights guiding principles on State obligations regarding private schools. Participants engaged with representatives of States, civil society groups and human rights organizations and experts on developing guiding principles for State support to private schools.

13. From 4 to 6 April, in Sao Paulo, Brazil, the Special Rapporteur attended an event marking the release of a study on the impact of strategic litigation on equal access to high-quality education in Brazil, India and South Africa, prepared by the Open Society Foundations. This study reviewed the impact of strategic litigation on strengthening the right to education in 11 countries.

14. On 8 May, the Special Rapporteur delivered an address at the 8th global meeting of the UNESCO mechanism Collective Consultation of Non-Governmental Organizations on Education for All, held in Siem Reap, Cambodia. Her address focused on encouraging engagement by civil society in the implementation of Goal 4 of the Sustainable Development Goals.

15. From 12 to 14 June, the Special Rapporteur visited the offices of the National Campaign for the Right to Education, in Brazil. She attended the launch of the "100 million" campaign and met with representatives of the Senate of Brazil and civil society.

16. From 18 to 22 June the Special Rapporteur visited the Foro Dakar in Honduras to review the situation relating to the right to education in that country. She also met with representatives of the Government and the Office of the United Nations High Commissioner for Human Rights.

17. On 28 June, the Special Rapporteur was a panellist at the high-level event on action in education for the implementation of Sustainable Development Goal 4, organized by the President of the General Assembly, in New York. In her intervention, she focused on the role of the right to education in achieving the Sustainable Development Goals.

18. On 8 September, the Special Rapporteur participated in an event in Paris marking International Literacy Day, organized by UNESCO with the theme "Literacy in a digital world", focusing on the literacy skills needed in digitally-mediated societies.

III. Equity, inclusion and non-discrimination

19. The prohibition against discrimination aims at addressing, in law and in practice, the barriers which exclude some students from accessing education or which impair their success once they are in schools. To address those barriers, States must pursue equitable and inclusive approaches. Equitable approaches must go beyond ensuring equal access for all to ensuring that individual learners receive the support they require to succeed, according to their individual circumstances. Inclusive education is aimed at ensuring that all learners, regardless of their linguistic and cultural backgrounds, physical and mental abilities or other personal characteristics, learn together in a welcoming and supportive environment.

A. Education without discrimination

20. The obligation to provide education without discrimination is found in many international treaties and instruments. The Convention against Discrimination in Education, of 1960, proscribes any form of discrimination in connection with the right to education. It prohibits discrimination in education on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth. The Convention requires States parties to go beyond the simple prohibition of discrimination and to ensure that the principle of equality of educational opportunities fully translates into concrete reality. Article 4 requires States parties to create national policies that promote equality of opportunity and of treatment in the field of education.

21. Those requirements are echoed in the International Covenant on Economic, Social and Cultural Rights. Article 2 (2) prohibits discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. In its general comment No. 13 (1999) on the right to education, the Committee on Economic, Social and Cultural Rights stressed that education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds.

22. Further prohibitions against discrimination are contained in numerous international treaties and declarations, including in article 28 of the Convention on the Rights of the Child, article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 24 of the Convention on the Rights of Persons with Disabilities and articles 14 and 21 of the United Nations Declaration on the Rights of Indigenous Peoples.

B. Equity, inclusion and the right to education

23. In the Sustainable Development Goals, the universal right to free, high-quality primary education without discrimination has been expanded to include secondary education. It is no longer sufficient to guarantee equitable access to schools; States must take measures to ensure that students are learning and that they graduate from at least lower-secondary school. In some cases, the particular circumstances of some students will prevent them from being as successful as others. Learners with disabilities, poor and rural students, girls, members of minority groups and other vulnerable groups face additional hardships that require assistance to ensure that they can succeed.

24. In recognition of that, Sustainable Development Goal 4 and the Education 2030 Framework for Action, call for greater efforts to ensure equity and inclusion, as part of the aim to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all by 2030. To bridge the gap, Governments must identify ways to support students who are in need by taking measures to ensure that all students come to school and stay to graduate.

C. Equity in education

25. It is important to distinguish between equity and equality in education. Equality refers to treating all students the same. Equity is providing all students with what they need to succeed. While it is important to ensure that all students have equal access to a high-quality education, the particular circumstances of some students may require additional support to ensure that they are able to succeed. Equity in education means that there is an obligation to ensure that personal or social circumstances such as gender, ethnic origin or economic background are not obstacles to accessing education and that all individuals reach at least a basic minimum level of skills.

D. Inclusion in education

26. Inclusive education provides the same learning environment for students of diverse backgrounds and abilities. Inclusive education often refers to the inclusion of learners with disabilities into a regular classroom environment, but it can also refer to the reintegration of older students who have been out of school for some time and the inclusion of students with different cultural and linguistic backgrounds or, in general, any student who requires additional support to succeed in the education system.

27. The goal of inclusive education is to ensure that all students learn and play together, with a sense of safety and belonging. By living and learning together, inclusive education directly tackles discrimination and bias and teaches tolerance and an appreciation for diversity. Supported by trained educators, and adequately equipped schools, inclusive education can change discriminatory attitudes and practices.

28. Inclusion requires a participatory approach. Articles 12 to 17 of the Convention on the Rights of the Child provides for children's freedom to express opinion and to have a say in matters affecting their social, economic, religious, cultural and political life, and, furthermore, provides for their right to express opinions and to be heard and their right to information and freedom of association. Similarly, in the Education 2030 Framework for Action, the importance of recognizing children, adolescents and young people as right holders and as

legitimate interlocutors in education policy and practice at all levels was underlined. Adolescents and young people around the world are suffering discrimination on the basis of their age, are not being consulted or listened to or having their views and opinions taken into consideration, be it in the classroom or in other educational and social contexts. Even worse, in some contexts, they are being criminalized or discriminated against for their political views or having their freedom of thought, expression and association violated.

29. Inclusive education has been shown to be cost-effective and to lead to the best learning outcomes for students. Special institutions, including specialized schools, should be avoided, in general, as a less desirable solution, because at a minimum, they make it more difficult for students of differing abilities to socialize and interact, activities which can improve tolerance and mutual respect. Inclusive schools that provide supportive, context-appropriate conditions for learning have been shown to be better for students.³

IV. People and groups at risk of exclusion

30. Recognizing the need for equitable and inclusive education free from discrimination, in the present report, the Special Rapporteur considers some of the people and groups that are overrepresented among eligible learners who are not in school.

31. In all countries, persistent barriers that lead to exclusion exist for many children and learners. Addressing and overcoming those barriers requires reaching all learners, respecting their diverse needs, abilities and characteristics and eliminating all forms of discrimination in the learning environment. In this section, the Special Rapporteur considers challenges that are common to people and groups that often face discrimination. However, despite the general observations that follow, the barriers faced will always be particular to local circumstances, and dialogue with national education administrations, civil society, parents and learners is crucial to identifying those barriers.

A. Women and girls

32. Women and girls are frequently excluded from education. Families often favour boys when investing in education. Child marriage, early pregnancy, child labour, housework obligations, school fees and residing long distances from schools all keep girls from attending school. Some schools do not address girls' needs for safety, water and sanitation facilities. When the curriculum is not responsive to their lives, or of good quality, parents may not make the effort needed to keep girls in school. Gender-based violence also keeps girls from completing their education.

33. As a result of those and other barriers, girls are more likely than boys to never attend school. It has been estimated that 15 million girls of primary school age will never get the chance to learn to read or write in primary school, compared with about 10 million boys.⁴ Of those 15 million girls, 9 million live in sub-Saharan Africa.

34. The greatest barrier to education for girls is poverty. In northern Africa and western Asia, among the poorest countries in the region, the gender gaps are the

³ Organization for Economic Cooperation and Development, *Equity and Quality in Education: Supporting Disadvantaged Students and Schools* (OECD Publishing, 2012), p. 9. Available from <http://dx.doi.org/10.1787/9789264130852-en>.

⁴ UNESCO, "Leaving no one behind" (see footnote 1).

widest; only 85 girls for every 100 boys of lower-secondary school age attend school. Among those of upper-secondary school age, only 77 of the poorest girls attend for every 100 of the poorest boys.

35. Girls' right to education is strongly protected under international law. Article 10 of the Convention on the Elimination of All Forms of Discrimination against Women is the most comprehensive provision on girls' and women's right to education. According to article 10, States parties have an obligation to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and to ensure, on a basis of equality of men and women, the same conditions for access to studies at all educational levels, in both urban and rural areas; the same quality of education; the elimination of any stereotyped concept of the roles of men and women; the same opportunities to benefit from scholarships and other study grants; the same opportunities to access programmes of continuing education, including literacy programmes; the same opportunities to participate in sport and physical education; the reduction of female student dropout rates; and access to educational information on health, including advice on family planning.

36. The International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention against Discrimination in Education and the International Covenant on Civil and Political Rights also guarantee girls' and women's right to education, combining general provisions on non-discrimination with specific provisions on the right to education. Furthermore, the obligation to achieve gender parity in education is reflected in the Sustainable Development Goals, target 4.5 of which is to eliminate gender disparities in education and ensure equal access to all levels of education and vocational training by 2030.

37. The treaty bodies have often called for States to address gender issues in education. A good example of the numerous measures to improve the conditions of education for girls is contained in the concluding observations of the Committee on the Elimination of Discrimination against Women on the combined second and third periodic reports of Timor-Leste (CEDAW/C/TLS/CO/2-3). The Committee called for increased efforts to retain girls and young women at all levels of education, including by providing adequate and gender-sensitive sanitation facilities and safe transportation to and from schools, as well as safe educational environments free from discrimination and violence, strengthening incentives for parents to send their daughters to school, eliminating child, early and forced marriage, and raising awareness among communities, families, pupils, teachers and community leaders, especially men, of the importance of education for girls and women (*ibid.*, para. 27 (a)). The Committee also requested that Timor-Leste adopt an official re-entry policy for young women and girls who have dropped out of school owing to early pregnancy, called for measures to educate children in an age-appropriate fashion on sexual and reproductive health and to address sexual violence in educational institutions.

38. The Committee on the Elimination of Discrimination against Women, in its concluding observations on the combined eighth and ninth periodic reports of Bhutan, recommended that the State party develop measures to ensure the effective retention of women and girls in school, especially when they are making the transition from primary to secondary school and at higher levels of education; intensify the provision of non-formal education and other adult literacy programmes to reduce female illiteracy; and increase the number of female teachers in schools by intensifying the enrolment of women in teacher training centres and colleges (CEDAW/C/BTN/CO/8-9, para. 25).

39. There are numerous good examples of national legislation that specifically addresses gender parity. In Argentina, Act No. 26.150 on Comprehensive Sex Education, of 2006, contains curriculum guidelines, including the requirement to foster learning that respects diversity, rejects all forms of discrimination and provides for equal treatment and opportunities for men and women. In Act No. 26.206 on National Education, of 2006, article 11 (f) provides that the purpose and aim of the national education policy are to ensure equal conditions and respect for differences among people and to prevent gender discrimination or any other type of discrimination.

40. In Morocco, an inter-ministerial framework was established, bringing together sectoral policies on gender. The Government agenda for equality, which has now become the Government equality plan for parity, 2012-2016, aims at creating a high level of synergy in order to mainstream a gender perspective into socioeconomic development programmes and policy. The plan has eight priority areas of action for the 2012-2016 period, the second of which is education, with the goal of achieving fair and equal access for girls and boys to a high-quality education system leading to qualifications. The related action plan is structured around two strategic objectives, namely, ensuring fair and equal access for girls and boys to a high-quality education system and reducing the dropout rate; and introducing an incentive system for innovative initiatives to promote equality and combat gender-based violence in schools.

41. The Special Rapporteur notes that the effective implementation of plans targeting the needs of women and girls requires gender-responsive budgeting, which ensures that adequate resources are applied to promote education for women and girls. Combined with the collection of disaggregated data, this will allow Governments to identify effective policies and practices and to demonstrate that sufficient funding is available.

B. Children with disabilities

42. It is estimated that more than 1 billion people around the world have some form of disability, with over eighty per cent living in developing countries.⁵ An estimated 93 million of them are children under the age of 14 living with a moderate or severe disability.⁶ Of those, between 110 and 190 million have significant difficulties in functioning, and the estimated number of children with disabilities who are between 0 and 18 years of age ranges from 93 to 150 million.⁷ Another estimate suggests that around the world there are about 62 million children of primary school age who have a disability, and 186 million children with disabilities who have not completed primary school.⁸

43. Those are estimates, however, given the lack of reliable information, in particular for education-related data, which rarely includes information on persons with disabilities. Children with disabilities are left out of national education plans when their numbers are unknown, and the means to address their needs are unidentified. The lack of data is a serious challenge for governments, donors and international actors in monitoring the situation of children, young people and adults

⁵ World Health Organization, *World Report on Disability* (Geneva, 2011), p. 36. Available from www.who.int/disabilities/world_report/2011/en/index.html.

⁶ Ibid.

⁷ Ibid.

⁸ UNESCO, *The Right to Education for Persons with Disabilities* (Paris, 2015). Available from <http://unesdoc.unesco.org/images/0023/002325/232592e.pdf>.

with disabilities, compounded by the fact that there are different forms and types of disabilities, which all require different forms of accommodation.

44. Children who are educated alongside their peers have a much better chance of becoming productive members of society and being included in their communities. In a study of 10 developing countries, the International Labour Organization (ILO) found that the loss to gross domestic product (GDP) from the exclusion of persons with disabilities from the labour market was estimated to be between 3 and 7 per cent of GDP.⁹ In addition, the returns to society from investment in more effective strategies for inclusion are recognized. In a report prepared for the Australian Network on Disability, Deloitte Access Economics predicted that a cumulative \$43 billion increase in GDP over the period 2011-2021 would result if the unemployment and labour force participation gaps between persons with and without disabilities were reduced by one third.¹⁰ UNICEF estimated that, in Bangladesh, the loss of income from a lack of schooling and employment of persons with disabilities and their caregivers was \$1.2 billion annually, or 1.7 per cent of GDP.¹¹

45. Children with disabilities may lack supportive parents, but instead have parents who do not enrol their children owing to their low expectations and lack of understanding of the value of an education. Parents with several children may give priority to their children without disabilities, in particular when there are costs for books, school uniforms or transportation. Most schools throughout the world remain physically inaccessible, with inaccessible hygiene and sanitation facilities and lacking appropriate equipment and materials or transportation. Once at school, such children may face stigma, prejudice and bullying from teachers, parents and other children. These barriers often compound their effects over time. Even where children with disabilities receive some primary education, the percentage of them accessing secondary education is often strikingly lower than that of their peers without disabilities.

46. The right to education of persons with disabilities is enshrined in the Convention on the Rights of Persons with Disabilities, which provides that, with a view to realizing that right without discrimination and on the basis of equal opportunity, States Parties should ensure an inclusive education system at all levels and lifelong learning. Article 24 (2) of the Convention provides that, in realizing that right, States parties should ensure that persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; and persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live. Measures aimed at fulfilling obligations under the Convention on Technical and Vocational Education would cover basic skills and would contribute to such education for persons with disabilities.

47. The Committee on the Rights of the Child, in its concluding observations on the combined second and third periodic reports of Saint Vincent and the Grenadines, recommended that the State party adopt legislation to ensure the provision of the services necessary for the realization of substantive equality for and the protection

⁹ Sebastian Backup, "The price of exclusion: the economic consequences of excluding people with disabilities from the world of work", Employment Working Paper No. 43 (Geneva, ILO, 2009).

¹⁰ Deloitte Access Economics, "The economic benefits of increasing employment for people with disability", report commissioned by the Australian Network on Disability (Sydney, 2011).

¹¹ UNICEF, "Children and young people with disabilities", fact sheet (May 2013). Available from www.unicef.org/disabilities/files/Factsheet_A5_Web_NEW.pdf.

of the rights of children with all types of disabilities, such as physical, sensory, intellectual and psychosocial disabilities, including the provision of reasonable accommodation so that they can lead an autonomous life in the community and access inclusive education (see CRC/C/VCT/CO/2-3, para. 20 (b)).

48. The Committee urged Saint Vincent and the Grenadines to set up a comprehensive strategy for the inclusion of children with disabilities, including those with physical, sensory, intellectual and psychosocial disabilities; to ensure that laws, policies and programmes, including the education development plan, prioritized inclusive education over the placement of children in specialized institutions and classes; and to train and raise the awareness of all teachers and other professionals on inclusive education and encourage the hiring of teachers with disabilities (Ibid., para. 44 (b), (e) and (f)).

49. The Committee on the Elimination of Discrimination against Women, in its concluding observations on the combined seventh to ninth periodic reports of Rwanda, recommended that the State party allocate sufficient human, technical and financial resources to ensure the provision of inclusive education for girls and boys with disabilities and financial support for girls who cannot afford school materials, and ensure that all girls have access to education, including in remote areas and refugee camps, for example by establishing mobile schools (CEDAW/C/RWA/CO/7-9, para. 33 (e)).

50. Croatia provides a good example of how to implement inclusive education. Article 60 of the Primary Schools Act requires inclusive education of learners with developmental difficulties in primary schools, with individualized procedures and prolonged professional treatments. For students with greater developmental difficulties, primary education is provided by means of special education. When a child is unable to attend primary school, education is organized by the nearest school with professional assistance. For children in health-care institutions, hospitals or institutions of social welfare, primary education is organized to meet the particular needs and capabilities of the pupils.¹²

C. Poverty

51. Poverty is one of the greatest barriers to education. Sub-Saharan Africa remains the region with the highest out of school rates for all age groups: more than half of all young people between the ages of 15 and 17 are not in school, as are more than one third of adolescents between the ages of 12 and 14 and one fifth of children between the ages of 6 and 11. Six countries are home to more than one third of all children of primary age who are out of school: Ethiopia, India, Indonesia, Nigeria, Pakistan and the Sudan.¹³

52. Children from the poorest 20 per cent of families are eight times as likely to be out of school as children from the richest 20 per cent, in lower-middle-income countries.¹⁴ Children of primary and secondary school age in the poorest countries are nine times as likely to be out of school as those in the richest countries. UNESCO estimates that children still bear significant costs for their education in

¹² UNESCO, *Implementing the Right to Education: A Compendium of Practical Examples* (Paris, 2010), p. 73. Available from <http://unesdoc.unesco.org/images/0019/001908/190897e.pdf>.

¹³ UNESCO, "World poverty could be cut in half if all adults completed secondary education", 19 June 2017. Available from <http://en.unesco.org/news/world-poverty-could-be-cut-half-if-all-adults-completed-secondary-education>.

¹⁴ Ibid.

some countries. In Ghana, children must pay \$87 to attend primary school, in Côte d'Ivoire, \$151 and, in El Salvador, \$680.¹⁵

53. Conversely, education is one of the greatest solutions to poverty. UNESCO analysis on the impact of education on poverty has shown that nearly 60 million people could escape poverty if all adults had just two more years of schooling.¹⁶ If all adults completed secondary education, 420 million of them could be lifted out of poverty, reducing the total number of poor people by more than half globally and by almost two-thirds in sub-Saharan Africa and South Asia.¹⁷

54. The right to education for the poor is included in the right to education for all. Articles 2 and 13 of the International Covenant on Economic, Social and Cultural Rights provides for the right of all people to education, without discrimination of any kind. In the Sustainable Development Goals and the 2030 Agenda for Sustainable Development, recognized that education was key to poverty eradication. Education helps people to obtain decent work, raises their incomes and generates productivity gains that fuel economic development. Furthermore, education raises people's awareness of their human rights, allowing them to engage with Governments to ensure a just and equitable society. As such, a human rights-based approach to poverty can enforce anti-poverty strategies and make them more effective.

55. In their concluding observations, the treaty bodies have called upon States to address the role that poverty has in impairing the realization of the right to education. The Committee on Economic, Social and Cultural Rights, in its concluding observations on the combined second and third periodic reports of Armenia, recommended that the State part reinforce efforts to ensure that poverty does not negatively affect a child's education or work prospects (E/C.12/ARM/CO/2-3, para. 23). In its concluding observations on the second periodic report of the Republic of Moldova, the Committee urged the State party to reinforce efforts to ensure that children are not prevented from attending school because of poverty in the family (E/C.12/MDA/CO/2, para. 28). Such efforts should also include the alleviation of the negative impact of indirect and informal costs on the access to education, especially within inadequately funded primary schools in rural areas (ibid.).

56. National legislation should ensure that education is free of any direct or indirect costs. In Bangladesh, for example, the Government distributes books and other education materials with a view to providing equal access to learning materials to all children who are going to school. In 2013, the Government distributed around 270 million books.¹⁸

57. The new inclusive education policy in the Cook Islands, launched in 2011, requires schools, teachers and others to recognize and meet the diverse needs of children with disabilities. The policy focuses on the right of all children to have a successful education and on developing an understanding of inclusivity and the promotion of inclusive practices. The policy provides schools with specialist services, including early intervention diagnostic services, advisory support in developing individual education plans for the students concerned and staff to support identified students in the classroom if needed. The policy is the result of

¹⁵ Ibid.

¹⁶ UNESCO, "Reducing global poverty through universal primary and secondary education", Policy Paper No. 32 and Fact Sheet No. 44 (June 2017). Available from <http://unesdoc.unesco.org/images/0025/002503/250392E.pdf>.

¹⁷ UNESCO, "World poverty could be cut in half..." (see footnote 13).

¹⁸ UNESCO, *Implementing the Right to Education: A Compendium of Practical Examples* (Paris, 2016), p. 94. Available from <http://unesdoc.unesco.org/images/0024/002451/245196e.pdf>.

collaboration between the Ministry of Education, the Ministry of Internal Affairs, which is responsible for children, and young people, as well as people with disabilities, the Ministry of Health and other stakeholders.

58. In Nauru, section 95 (1) of the Education Act 2011 provides that a school-age child with a disability must not be excluded from access to free primary and secondary education on the basis of the disability. The Act implements the principle of inclusive education by requiring schools to accommodate and support school-age children who have a disability, and by ensuring that teachers are trained with additional modes of communication and educational techniques, as required.

D. Cultural, ethnic and linguistic minority groups

59. The rights of cultural, ethnic and linguistic minority groups to education are widely recognized in human rights treaty law. Despite that fact, members of those groups often face discrimination and barriers to realizing their right to education. The movements of refugees and migrants in many parts of the world today raise questions not just of access to education, but of segregation and integration. Inclusion calls for respect for diversity, whether cultural, religious and linguistic. Cultural pluralism must be planned for in national education policies and those plans implemented in order to ensure respect for the rights of national minority groups and newly arrived migrant or refugee populations.

60. Article 4 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities calls upon States to take measures in the field of education in order to encourage knowledge of the history, traditions, language and culture of the minority groups existing within their territory (General Assembly resolution 47/135, annex). Persons belonging to minority groups should have adequate opportunities to gain knowledge of the society as a whole, and an equitable, inclusive education system incorporates those norms to ensure that the needs of such groups are respected.

61. Article 5 of the Convention against Discrimination in Education provides for the right of national minority groups to carry out their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or teaching of their own language. It requires that, in the exercise of that right, the members of minority groups be respectful of the culture and language of the community as a whole and not be prejudicial to national sovereignty. The Convention requires that the standard of education in minority schools meet national standards and that enrolment in such schools is optional. However, an equitable, inclusive education system should be preferred to minority groups' carrying out their own educational activities.

62. Persons belonging to ethnic minority groups are often prevented from fully enjoying their right to education. In some countries, they suffer from irregular access to education. The Committee on Economic, Social and Cultural Rights has observed that persons of African descent are an ethnic group that is likely to be prevented from accessing education in Costa Rica and Canada and called for those States to adopt and effectively implement a targeted programme of action to realize the rights of persons of African descent under the International Covenant on Economic, Social and Cultural Rights (E/C.12/CRI/CO/4, para. 35, and E/C.12/CAN/CO/4, para. 32).

63. In many countries, linguistic minority groups are given particular attention in national education systems, including in Australia (indigenous peoples), Brazil (Afro-Brazilians), Croatia, Czechia, Hungary, Latvia, Norway, Slovakia (Roma), Slovenia (special educational rights for Italians and Hungarians) and Spain

(immigrants). Those countries offer language facilities and regulate the educational standards of educational institutions run by minority groups.¹⁹

64. The language of instruction, as well as knowledge of languages, plays a key role in learning. Bilingual education has been found to improve the schooling outcomes of children from indigenous communities in many countries, which suggests that there is a need to recognize the importance of mother tongue instruction in early childhood and the first years of primary school. The contemporary issues regarding language and the right to education call for practical solutions, with a view to operationalizing the existing normative framework established in the United Nations human rights conventions referred to in the present report.

65. The Committee on Economic, Social and Cultural Rights, in its concluding observations on the initial report of Togo on the implementation of the International Covenant on Economic, Social and Cultural Rights, recommended that the State party ensure that minority languages and human rights are taught at all levels of the education system (E/C.12/TGO/CO/1, para. 34). The Committee, in its concluding observations on the sixth periodic report of Sweden, recommended that the State party take immediate steps to provide indigenous children and children belonging to minority groups with educational opportunities that allow them to develop their mother tongue skills (E/C.12/SWE/CO/6, para. 46). The Committee also recommended that the State party broaden the access to bilingual education in areas populated by indigenous peoples and minority groups, and that it increase the availability of Sami and minority language teachers, including by substantially increasing the resources for training teachers in national minority languages (*ibid.*). The Committee has recommended that sufficient funding be provided for bilingual education. Children belonging to minority groups or indigenous communities are entitled to have equal opportunities to receive instruction in their mother tongue; any distinction between different minority and indigenous groups must be justified by reasonable and objective criteria (E/C.12/SVN/CO/1, para. 11, and E/C.12/BIH/CO/1, para. 50).

66. Article 34 of the Constitution of Slovakia provides for the right for children of national minority and ethnic groups to an upbringing and education in their language, along with the national language. In Czechia, Act No. 561/2004 on preschool, basic, secondary, tertiary professional and other education (Education Act) provides for the recognition of the right of members of national minority groups to learn their minority language or to receive education in that language. Section 14 of the Act requires municipalities, regions or the Ministry of Education to ensure the provision of education for members of national minority groups in the language of the relevant minority at the nursery, basic and secondary school levels.

E. Indigenous communities

67. A diverse range of minority groups and indigenous peoples exist across the world, and one thing they all have in common is that they often face discrimination, marginalization and exclusion. Children of indigenous population are less likely to enrol in primary education and more likely to repeat grades than non-indigenous children.²⁰ Indigenous children are regularly deprived of access to high-quality education that is relevant and responsive to their specific context and needs.

¹⁹ UNESCO, "Inclusive dimensions of the right to education: normative bases" concept paper (2008), p. 13.

²⁰ *Ibid.*

68. Articles 1, 7 and 26 to 31 of the Indigenous and Tribal Peoples Convention, 1989 (No. 159) of ILO provide that indigenous peoples have the same right to education as is afforded to other citizens of the country. To address the specific requirements of indigenous peoples, articles 14, 15, 17 and 21 of the United Nations Declaration on the Rights of Indigenous Peoples afford them control over their education, to be provided in their own language and in accordance with their own culture and traditions. As with education for minority groups, however, the Special Rapporteur finds it far preferable for States to create an inclusive national education system that incorporates those values and rights, ensuring not just that indigenous people learn their languages, customs and traditions, but that they be taught to all students.

69. The treaty bodies regularly call upon States to ensure that indigenous children have access to education, including the provision of an adequate number of teachers and the good quality of schools, and to improve the academic performance of indigenous children (E.C.12/CRI/CO.4, para. 35, and E.C.12/MAR/CO.3, para. 46).

70. The Committee on the Elimination of Discrimination against Women, in its concluding observations on the combined seventh and eighth periodic reports of Honduras, recommended that the State party take specific measures to accelerate substantive equality between women and men, in particular women from indigenous communities, including in political life and in the areas of health, education, vocational training and employment (CEDAW/C/HND/CO.7-8, para. 19).

71. The Committee on Economic, Social and Cultural Rights, in its concluding observations on the third periodic report of Guatemala, recommended that the State party continue its efforts to implement its literacy plan and step up its efforts in rural areas and among the indigenous peoples (E.C.12/GTM/CO.3, para. 25). The Committee also called upon Ecuador to continue its efforts to implement its literacy plan and to ensure that it covers rural areas, zones inhabited by indigenous peoples and different age groups (E.C.12/ECU/CO.3, para. 31).

72. Article 75 of the Constitution of Australia recognizes the right of indigenous peoples to receive an education that helps to preserve and reinforce their cultural norms, languages, world views and ethnic identities, to play an active role in a multicultural world and to improve their quality of life. Intercultural bilingual education thus fosters a mutually enriching exchange of knowledge and values among indigenous peoples and ethnically, linguistically and culturally different populations and encourages the recognition of, and respect for, such differences.

73. In Chile, under Law No. 19.253 the State requires the development of a bilingual intercultural education system, in areas with many indigenous peoples, in order to prepare indigenous students to manage adequately either in their original society or globally. In addition, the State must allocate special resources to the Ministry of Education for indigenous grant programmes.

F. Rural populations

74. There is a critical need to ensure the right to education of rural populations, especially for those who live in remote areas. Rural learners often face long travel times to school, when they are even available. Often living in agricultural settings, rural children may be required to assist with farming activities, and parents may not appreciate the benefits of providing their children with an education, in particular when there are costs relating to school fees, transportation, uniforms or materials, especially when those families are poor. Teachers are often reluctant to endure the hardships of teaching in remote communities, especially absent any form of incentive.

75. The right to education for rural people arises from the rights that apply to all people, but includes special measures to ensure that rural women have access to educational opportunities. Historically, rural women have had inferior access to educational opportunities compared with men and, in many cultures, are kept at home to take care of the family. To address prejudicial attitudes, articles 10 and 14 (d) of the Convention on the Elimination of All Forms of Discrimination against Women call for States parties to ensure equal access to all forms of education for rural women and that rural women have equal access to formal and non-formal education, including that relating to literacy and vocational training.

76. Promoting the quality of teaching and learning, paying special attention to the strategies for placing, supporting and retaining qualified and trained teachers in rural areas and improving their working conditions, is of crucial importance. The Committee on Economic, Social and Cultural Rights, in its concluding observations on the combined fifth and sixth periodic reports of the Philippines, recommended that the State party take all measures necessary to strengthen its public education sector, including by increasing the budget allocated to primary and secondary education with a view to improving access to, and the quality of, education, without hidden costs, in particular for children of low-income families and children living in rural areas (E.C.12/PHL/CO.5-6, para. 56). The Committee on the Rights of Persons with Disabilities, in its concluding observations on the initial report of the Dominican Republic on the implementation of the Convention on the Rights of Persons with Disabilities, recommended that the State party adopt a policy to provide access to good quality, inclusive education at all levels, taking particular account of the gender perspective, in both urban and rural areas (CRPD/C/DOM/CO.1, para. 45).

77. Panama implements non-formal education programmes that target socially vulnerable groups among its population. For example, family and community centres for early childhood education offer non-formal preschool education for children of 4 and 5 years of age who are living in rural, indigenous and marginal urban areas of the country's 13 educational regions.

78. In Turkey, Law No. 3684 concerning social assistance for students at primary and secondary schools provides for a free bus service for children of primary school age living in rural areas and a subsidy for boarding and school uniforms. In sparsely settled areas, Turkey constructed regional primary-level boarding schools to serve villages that might otherwise not have access to high-quality education. Conditional cash transfers provide financial assistance in the areas of health, nutrition and education to parents who would otherwise be unable to send their children to school.

G. Refugees

79. The Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that only 50 per cent of refugee children have access to primary education, compared with the global average of more than 90 per cent.²¹ The gap widens as those children become older, with only 22 per cent of refugee adolescents attending secondary school, compared with the global average of 84 per cent. At the higher education level, fewer than 1 per cent of refugees attend university, compared with 34 per cent at the global level. The average length of time that a refugee spends in

²¹ UNHCR, *Missing Out: Refugee Education in Crisis* (2016). Available from www.unhcr.org/57d9d01d0.

exile is almost 20 years.²² A total of 86 per cent of the world's refugees are hosted in developing regions, with more than a quarter in least developed countries.²³

80. UNHCR reports that half of all refugees are found in only seven countries: Chad, Democratic Republic of the Congo, Ethiopia, Kenya, Lebanon, Pakistan and Turkey.²⁴ Those States already have difficulty meeting the needs of their own people and must find additional places in school, trained teachers and learning materials for thousands of refugees. Often, those children have been out of school for years, and they may not speak the language of instruction. In many cases, they suffer from psychosocial stress and trauma, having fled from violence.

81. Despite those challenges, States are obliged to provide refugees with an education. Article 22 of the Convention relating to the Status of Refugees requires States parties to provide refugees with equal treatment as citizens regarding elementary education, and treatment as favourable as possible, and not less than that accorded to other non-citizens, regarding all other forms of education.

82. States must include potential mass movements of refugees or internally displaced persons in their national education plans, as Cameroon, Chad, the Niger, Pakistan and South Sudan recently have done.²⁵ Donors, aid agencies and international organizations must similarly plan for, and adequately finance, education plans for refugees that take fully into account their right to education.

83. In its concluding observations on the combined second and third periodic reports of Tajikistan, the Committee on Economic, Social and Cultural Rights recommended that the State party take all appropriate measures to address the problem of high dropout rates among children in disadvantaged situations, including refugees (E/C.12/TJK/CO.2-3, para. 34). The Committee, in its concluding observations on the initial report of Montenegro on the implementation of the International Covenant on Economic, Social and Cultural Rights, called upon the State party to collect disaggregated data on school enrolment and dropout rates at various levels of education, including in relation to asylum seekers, refugees and displaced persons, to identify obstacles to accessing and continuing education and to devise appropriate strategies (E/C.12/MNE/CO.1, para. 25).

84. In Sweden, under Ordinance 2001:976, children and young people who are seeking asylum have essentially the same right to education in preschool, school and after-school centres as those who are Swedish residents. The local municipalities receive funding from the Swedish Migration Agency for the education costs of those students. In New Zealand, refugees have the right to access free publicly funded education. The Ministry of Education provides additional support, both funding and expertise, to schools that are working with refugees and asylum seekers.

II. Migrants and migrant workers

85. Migrant workers face particular difficulty in accessing high-quality education, including for their children. ILO estimated that, in 2015, there were 150 million migrant workers worldwide, with about 45 per cent of them being women.²⁶ Migrant workers provide important economic support for many countries, but those benefits

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ ILO, *ILO global estimates on migrant workers* (Geneva, 2015). Available from www.ilo.org/global/topics/labour-migration/publications/WCMS_436343/lang--en/index.htm.

come with the obligation to provide access to education to those workers, their children and members of their families.

86. Articles 30, 43 and 45 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families require States parties to provide equal access to education for migrant workers, their children and members of their family.

87. In practice, those groups face significant challenges. When moving into new territories, migrant groups require a significant amount of additional resources, which may often overwhelm the capacity of existing schools. National education plans, in coordination with labour ministries, must plan for and provide adequate educational facilities for migrant workers, in particular in areas where seasonal work is common.

88. The children of migrant workers face not only the hardships relating to moving to a new country, but often prejudice in schools and a lack of accommodation for different cultural and linguistic backgrounds or inadequate prior education. Specific measures are required to address those issues. The Committee on Economic, Social and Cultural Rights, in its concluding observations on the combined second and third periodic reports of Tajikistan, recommended that the State party take all appropriate measures to address the problem of high dropout rates among children in disadvantaged situations, including children of migrant workers (E/C.12/TJK/CO/2-3, para. 34).

89. Where special facilities are created for migrants, there is an obligation to also ensure access to education. The Committee on Economic, Social and Cultural Rights, in its concluding observations on the second periodic report of the Republic of Moldova, also recommended that the State party ensure access to education for children accompanying their parents and placed in the Migrants Accommodation Centre in Chisinau (E/C.12/MDA/CO/2, para. 28).

90. In Cyprus, legislation provides for non-discrimination against children of migrant workers. Legislation alone is not always enough. In the Dominican Republic, the Ministry of Education and the Ministry of Immigration created an education portfolio fund to help pay for the documentation of 24,000 students who were undocumented migrants and refugees lacking birth certificates.

I. Internally displaced persons

91. There were an estimated 31.1 million internally displaced people in 2016.²⁷ They are often fleeing violence or natural disasters and suffer many of the same challenges faced by refugees. Internally displaced persons remain citizens within their own country and so should receive all the protections and benefits available to all. To the extent that their nationality is in question, they benefit from the protection provided by article 3 (c) of the Convention against Discrimination in Education, which requires States parties to provide foreigners with the same access to education as nationals.

92. Internally displaced persons are also vulnerable, given that they are still under the geographical jurisdiction of their own State, which in some cases may be the cause of their displacement. In instances where internally displaced persons are denied education by the State, they have no further recourse at the national level,

²⁷ Internal Displacement Monitoring Centre, *Global Report on Internal Displacement* (Geneva, 2017). Available from www.nrc.no/resources/annual-reports/global-report-on-internal-displacement-2017/.

and it then becomes the duty of the international community to facilitate the fulfilment of the right to education.

93. In Serbia, article 14 of the Law on Preschool Education provides that children that are foreign citizens, as well as children from vulnerable groups without proof of residence or other personal identity documents, refugees or displaced persons are permitted to enrol in a preschool and/or school delivering the preparatory preschool programme under the same conditions and in the manner regulated for the citizens of Serbia. In order to ensure equal treatment of foreign citizens in the enrolment, attendance and completion of secondary school, Serbia implemented a procedure for the recognition of diplomas and certificates acquired abroad or from a foreign school.²⁸

J. Nomadic peoples

94. Nomadic peoples, including pastoral nomads and Roma populations, present particular challenges as they may frequently move throughout the year. Attempts to force such populations to remain in one location, or to send their children to a boarding school, are not respectful of their culture. Their right to education is recognized in the recommendation on adult learning and education of the General Conference of UNESCO,²⁹ in addition to the provisions on basic education rights set out in other treaties.

95. UNESCO has provided technical assistance to Governments to ensure that special measures are put in place for nomadic populations, including positive measures in favour of children from the arid and semi-arid lands in Kenya and the *almajiri* system in Nigeria. In Nigeria, the Act on Compulsory Free Universal Basic Education provides for basic education, including the education of special groups such as nomadic populations and migrants, women and girls, street children and persons with disabilities.

96. The Committee on the Elimination of Racial Discrimination, in its concluding observations on the combined fifteenth to twenty-first periodic reports of the Niger, recommended that the State party continue to implement special measures, including with regard to the right to education. The Committee recommended that the Niger strengthen its mobile schools programme with a view to boosting enrolment and literacy rates among nomadic populations (CERD/C/NER/CO/15-21, para. 17).

97. In northern Mali, the Government has established special schools in which teachers follow the students as the populations move around the country, thus allowing continuity in the education provided. In those schools, free lunches are offered in order to promote the enrolment and retention of children in school.³⁰

98. In the Islamic Republic of Iran, nomadic education centres play an important role in reducing the dropout rate of graduates, as well as of other students having no access to daily conventional schools in disadvantaged, underpopulated and tribal regions of the country. In those schools, students are supplied with three meals, dormitories and other educational and training facilities free of charge.³¹

²⁸ UNESCO, *Implementing the Right to Education* (2016) (see footnote 18).

²⁹ Available from <http://uil.unesco.org/adult-learning-and-education/unesco-recommendation/unesco-recommendation-adult-learning-and-education>.

³⁰ UNESCO, *Implementing the Right to Education* (2010), p. 140 (see footnote 12).

³¹ UNESCO, *Implementing the Right to Education* (2016), p. 99 (see footnote 18).

K. Roma

99. Roma children constitute another group suffering from limited access to education. In the reports submitted to UNESCO in the context of the seventh consultation on the implementation of the Convention and the Recommendation against Discrimination in Education, several States members reported on the progressive measures taken and the obstacles encountered regarding the realization of the right to education for Roma children. The integration of those children into the education system, while respecting their cultural identity and the principle of non-discrimination, can be promoted by drawing upon practical examples.

100. The Committee on Economic, Social and Cultural Rights, in its concluding observations on fifth periodic report of Ukraine, recommended that the State party adopt special measures, including subsidies for textbooks and other educational tools, to increase school attendance by Roma children at all levels (E/C.12/UKR/CO/5, para. 54). The obligation of the State party also comprises the provision of language classes, the combating of discrimination against Roma students and the need to raise awareness among Roma families on the importance of education, including for girls. The provision of mother tongue education for pupils of minority groups, including Roma, has also been interpreted as obligatory under the International Covenant on Economic, Social and Cultural Rights, including in the Committee's concluding observations on the initial report of Slovenia on the implementation of the Covenant (E/C.12/SVN/CO/1, para. 11). The conditions of Roma children in Europe are a key concern, given that the Roma population consists of over 10 million people.

101. The Ministry of Education in Czechia has implemented a number of measures to assist in the education of Roma children, including the creation of preparatory classes for Roma children who are entering basic educational institutions, the establishment of the position of Roma assistant at such schools, the modification of the school curriculum to better meet the needs of Roma children, the introduction of the possibility of smaller classes in schools with a high proportion of Roma children, and the development of mechanisms for the provision of financial support.¹²

L. Stateless people

102. It is estimated that there may be 12 million Stateless people in the world, and it is estimated that 5 million of them are minor children.¹³ Those children who are denied a nationality may be refused access to schools, because they are unable to enrol owing to their lack of documentation. In Malaysia, Stateless children of Indian, Filipino or Indonesian descent in the states of Selangor and Sabah are frequently denied access to basic education in state schools. If a child's birth certificate has "foreigner" written on it, or if a child has no birth certificate, the child is unable to enrol in school.¹⁴ It is estimated that 80 per cent of the Rohingya population in Myanmar are illiterate, and some 60 per cent may have never attended school.¹⁵

103. The right of Stateless people to education is protected under article 22 of the Convention relating to the Status of Stateless Persons and under article 3 of the

¹² UNESCO, *Implementing the Right to Education* (2010), p. 140 (see footnote 12).

¹³ Open Society Justice Initiative, "Children's right to a nationality", fact sheet (June 2011). Available from: www.opensocietyfoundations.org/publications/fact-sheet-childrens-right-nationality.

¹⁴ Ibid.

¹⁵ Katrina Kaufman, "Myanmar: Rohingya Children Losing Future Without Education", 23 February 2016. Available from www.voanews.com/a/myanmar-rohingya-children-losing-future-without-education/3203595.html.

Convention against Discrimination in Education, both of which require Governments to provide Stateless people with the same right to elementary education as nationals and to the same standard as provided to any other non-national for all other levels of education.

104. Stateless people require the support of the international community to ensure that their right to education is respected. Lacking any government support, and often discriminated against in their country of residence, it is incumbent upon the international community to speak loudly and clearly in support of Stateless people realizing their rights.

105. An example of good legislation is found in the Elementary School Act of Slovenia, article 10 of which provides that children who are foreign citizens or without citizenship and living in the country have the right to compulsory elementary education under equal conditions as the citizens of the country. In Czechia, under Act No. 561 on preschool, basic, secondary, tertiary, professional and other education, that right is extended to public secondary schools.

M. Private education

106. The Special Rapporteur recalls that State obligations to realize the right to education include the obligation to regulate private educational institutions, as set out in general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, of the Committee on Economic, Social and Cultural Rights (E/C.12/GC/24, para. 21). Private providers should be subject to strict regulations, imposing on them public service obligations. Private schools must not be permitted to engage in any form of discrimination and must be held to the same standards for inclusion and accommodation as any public institution, in particular by prohibiting the expulsion of poorly performing students. In addition, financial hardship must never be an excuse for for-profit schools to fail to meet national standards for inclusion. States must also ensure that any private school system does not create economic discrimination or segregation in the education system.

V. Conclusions and recommendations

107. As Governments work to implement the Sustainable Development Goals, particular care is needed to address discrimination by identifying people and groups who are in need of specific, targeted support. This requires a review of laws, policies, disaggregated education data and targeted financing and actions to address the specific needs of learners, which is best implemented through decentralized decision-making and inclusive consultations with all stakeholders, including learners, parents and communities.

108. States must not only ensure that schools provide equal opportunities for all learners to access education according to their ability, but also ensure that learners receive the support that they require to succeed once they are in school. Laws and policies must clearly be aimed at eliminating discrimination, and they must also provide for measures to ensure that the barriers and disadvantages faced by some learners are also addressed. However, States must also ensure that the necessary measures are implemented at the local level to ensure that all learners are able to pursue, and succeed at, their educational goals.

109. In order to ensure that States are meeting their obligations regarding inclusive and equitable education, it is vital that disaggregated data be collected and published. Donors and international organizations should provide financial and technical support to ensure that all States develop the capacity to monitor and report on all segments of the population. Without such measures, it is very difficult to identify the challenges and barriers preventing all learners from succeeding in school.

110. The right to education encompasses all aspects of education, from early childhood care and education to adult literacy programmes, and the right to lifelong learning. Equitable, inclusive approaches should be applied at all levels of education, not just the primary level. Education programmes must also remain holistic and prepare learners not just for employment, but for all aspects of their lives.

111. In the light of the foregoing, and taking into consideration the concerns raised in connection with vulnerable people and groups in the present report, the Special Rapporteur offers the recommendations set out below.

112. States must take action to identify and address the multiple barriers faced by women and girls. Cultural and economic barriers require not just anti-discriminatory laws and policies, but also active measures to address financial costs, as well as engagement with families, communities and religious leaders, in order to ensure that education for girls is valued and supported. This includes gender-responsive budgeting and reporting and mainstreaming a gender perspective in approaches to all aspects of education. It is of vital importance that girls and their families are made aware of their human right to an education.

113. Inclusive education requires schools to adapt and accommodate all children, regardless of their physical, intellectual, social, emotional, linguistic or other personal circumstances. States must ensure that all children receive the special assistance they require to address their individual needs; they cannot simply be added to classrooms without accommodations. Effective inclusion must be implemented through education laws and policies, and it must also be incorporated into the culture and practices within schools.

114. Education must be ethnically, culturally and linguistically inclusive. No student should be made to feel excluded, and diverse cultural, religious and linguistic perspectives should be incorporated into curricula and classroom practices.

115. Bilingual and native language instruction should be provided in schools with significant numbers of students from linguistic minority groups. This is especially relevant today with regard to schools that are being established for migrants and refugees, who already face significant additional barriers to integrating into a foreign education system and a foreign culture. Respect for diversity should be reflected in curricula, which should be sensitive to the culture and religion of learners.

116. The low population densities and often high poverty levels among rural people require greater per capita investment by States. Barriers, including unwillingness of teachers to live in remote areas, high transportation costs or long travel times to schools, can often be addressed through additional financial support or innovative, flexible education programmes. States must take measures to ensure that rural education is of the same quality as that provided in urban settings.

117. Evidence indicates that inclusive education is of comparable cost, but more effective in educating persons with disabilities, to segregated systems. States should make every effort to ensure that national education systems are inclusive for all learners, including those with physical and mental disabilities. Inclusion policies should also address all forms of diversity in student populations, including different ethnic, cultural, linguistic and economic backgrounds.

118. National education legislation must never preclude children with disabilities from realizing their right to education. Legislation which considers certain categories of children to be "uneducable", or which places responsibility for the education of children with disabilities with ministries other than education, must be amended.

119. The complex, multidimensional barriers faced by learners from poor families require targeted financial and material interventions. At a minimum, primary and secondary education must be free of charge, including tuition, uniforms, textbooks and transportation to school. Special measures may include free meals, flexible school schedules to accommodate the demands of agricultural households or mobile schools for nomadic populations. School buildings must meet national standards, and teachers must be well-trained and supported. Coordination within the Government may be necessary to ensure that poor families have access to electricity and other utilities, as well as basic health care.

120. Governments must indicate in laws and policies that education for poor students must be free, of good quality, and accessible. Historical prejudices that devalue education for the poor must be visibly challenged to enforce the norm that everyone has the equal right to high-quality education.

121. States must include potential mass movements of refugees or internally displaced persons in their national education plans, and those learners must be reflected in national education data systems to ensure that their achievements are monitored. For donors and aid agencies, crisis response plans must recognize that such populations will stay for years, and education plans must be adapted accordingly to include them. To the extent possible, education plans and educational institutions should anticipate and address the cultural and linguistic differences of students.

122. Stateless people often face the most severe forms of discrimination, given that they have no Government to rely upon for protection. This places an extra burden on the international community and Governments to ensure that their right to education without discrimination is implemented in practice. Where that is not the case, I call upon other Governments to draw attention to such injustices in dialogue with the host country, as well as in international forums.

123. The primary responsibility for implementing the right to education lies with Governments. However, the international community must provide targeted political, financial and technical support to assist governments in implementing inclusive and equitable education policies. This is particularly relevant in relation to efforts to achieve the Sustainable Development Goals and implement the Education 2030 Framework for Action.